

10412

REVIEW OF PRACTICE

OPERATION OF THE AUTOMATIC SYSTEM

DATA FROM 1971-72

1971-72

OPERATION OF THE AUTOMATIC SYSTEM

DATA FROM 1971-72

(29,197)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 647.

HANNAH CANARD BARNETT AND TUCKER K. BARNETT,
APPELLANTS,

vs.

W. A. KUNKEL AND THE PRAIRIE OIL & GAS COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.

INDEX.

	Page.
Caption to transcript from U. S. circuit court of appeals.....	a
Record from U. S. district court for the eastern district of Oklahoma..	1
Amended bill of complaint.....	1
Exhibits to answer of Tucker K. Barnett and Hannah Canard Barnett	10
Exhibit No. 1—Oil lease, Hannah Canard Barnett and Tucker K. Barnett to Geo. C. Crump, March 27, 1913.	10
No. 2—Petition Creek County district court, Hannah Canard <i>vs.</i> Sims <i>et al.</i>	12
Contract between Hannah Canard Barnett and Geo. C. Crump, March 27, 1913.....	14
No. 3—Disclaimer of B. O. Sims, district court of Creek County.....	17
No. 4—Assignment of oil lease, Geo. C. Crump to R. S. Litchfield, May 26, 1913.....	18
No. 5—Quitclaim deed, Geo. C. Crump to R. S. Litchfield, May 26, 1913.....	19

	Page
Exhibit No. 6—Stipulation of Hannah Canard Barnett and R. S. Litchfield quieting title in Litchfield, July 3, 1913.....	21
No. 7—Stipulation, Hannah Canard Barnett and R. S. Litchfield dismissing cause with prejudice, June 23, 1913.....	22
No. 8—Journal entry of decree, U. S. district court, July 3, 1913.....	23
No. 9—Journal entry of decree, district court of Creek County, July 11, 1913.....	24
No. 10—Adjournment of county court of Okfuskee County, May 20, 1913.....	26
No. 11—July term, county court Okfuskee County, adjourned for term.....	26
No. 12—County court Okfuskee County convened October 6, 1913.....	26
No. 13—Quitclaim deed, B. O. Sims and wife to R. S. Litchfield, June 17, 1913.....	27
No. 14—Special warranty deed, R. S. Litchfield <i>et al.</i> to W. A. Kunkel, May 6, 1914.....	28
No. 15—General warranty deed, R. S. Litchfield <i>et al.</i> to W. A. Kunkel, May 12, 1914.....	29
No. 16—Oil and gas lease, W. A. Kunkel to Prairie Oil & Gas Co., May 12, 1914.....	29
No. 17—Quarter annual statement Prairie Oil & Gas Co. to State auditor, April 1, 1914, to June 30, 1914	30
No. 18—Quarter annual statement Prairie Oil & Gas Co. to State auditor, July 1, 1914, to September 30, 1914.....	31
No. 19—Quarter annual statement Prairie Oil & Gas Co. to State auditor, October 1, 1914, to December 31, 1914.....	32
Amended answer and cross-complaint of Hannah Canard Barnett and Tucker K. Barnett to the bill and amended bill of complaint and to answer of Prairie Oil & Gas Co.....	40
Answer of the cross-defendant, W. A. Kunkel, to the amended cross-bill of Tucker K. Barnett and Hannah Canard Barnett.....	61
Answer of the cross-defendant, The Prairie Oil & Gas Co., to the amended cross-bill of Tucker K. Barnett and Hannah Canard Barnett	61
Decree	63
Stipulation to print the evidence in the language of the witnesses.....	66
Order permitting testimony to be printed in full.....	69
Statement of the evidence.....	70
Offers in evidence and objections thereto.....	70
Testimony of M. C. Jones.....	77
Offers in evidence.....	82
Testimony of M. C. Jones (recalled).....	84
C. C. Standford.....	89
Sam Turner.....	91

INDEX.

iii

	Page.
Testimony of Willies Smith.....	94
Nat Dosey.....	97
Francis Stewart.....	103
Hannah Canard Barnett.....	105
H. B. Catlett.....	117
R. D. Wallace.....	118
J. H. Swofford.....	118
J. B. Patterson.....	119
W. A. Kunkel.....	123
Nelson K. Moody.....	132
T. J. Farr.....	134
Plaintiff's Exhibit No. 1—Stipulation of counsel as to issues....	136
Order of county court of Hughes County approving deed of Hannah Canard to B. O. Sims.....	138
Plaintiff's Exhibit No. 2—Warranty deed, Hannah Canard to B. O. Sims, March 22, 1909.....	139
Plaintiff's Exhibit No. 3—Order, county court of Okfuskee County, approving deed of heirs of Mehaley Watson to B. O. Sims, June 17, 1913.....	141
Entries from land approval fee record No. 1, Okfuskee County, Oklahoma	142
Proof, same order taken from county court record by U. S. court stenographer	143
Plaintiff's Exhibit No. 6—Stipulation of counsel showing chain of title.....	144
No. 7—Quitclaim deed, B. O. Sims and wife to R. S. Litchfield, June 17, 1913..	146
No. 8—Special warranty deed, R. S. Litchfield <i>et al.</i> to W. A. Kunkel, May 6, 1914.....	148
No. 9—General warranty deed, R. S. Litchfield <i>et al.</i> to W. A. Kunkel, May 12, 1914.....	149
No. 9-A—Agreement of R. S. Litchfield <i>et al.</i> guaranteeing title of lands in controversy	151
Assignment of W. A. Kunkel to Prairie Oil & Gas Co. of lands and leases.....	152
Defendants' Exhibit No. 1—Petition for approval of deed of Hannah Canard to B. O. Sims, county court of Okfuskee County	152
No. 3—Order, county court of Okfuskee County, approving deed, Hannah Canard to B. O. Sims.....	154
No. 5—Oil and gas lease, Hannah Canard Barnett <i>et con.</i> to Geo. C. Crump, March 27, 1913.....	156
No. 6—Order and approval of oil and gas lease contract, Hannah Canard to Geo. C. Crump.....	159

INDEX.

	Page
Prairie Oil & Gas Company Exhibit No. 1—Oil and gas lease, W. A. Kunkel to Prairie Oil & Gas Company, May 12, 1914...	16
Stipulation of counsel that transcript is true and correct copy of all matters occurring at trial of case.....	16
Order of court approving transcript.....	16
Petition for appeal and order allowing same.....	16
Assignments of error.....	16
Cost bond on appeal.....	16
Citation and admission of service.....	16
Stipulation as to contents of record.....	16
Certificate of clerk.....	16
Appearances	17
Argument and submission.....	17
Opinion, Stone, J.....	17
Decree	17
Petition for appeal.....	17
Assignment of errors.....	17
Order allowing appeal.....	17
Bond on appeal.....	17
Citation and service.....	18
Clerk's certificate.....	18

a

Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, A. D. 1922, of said Court, before the Honorable John E. Carland and the Honorable Kimbrough Stone, Circuit Judges, and the Honorable Jacob Trieber, District Judge.

Attest:

[Seal of United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,

*Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

Be it Remembered that heretofore, to-wit: on the twentieth day of August, A. D. 1921, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Hannah Canard Barnett, et al., were Appellants, and W. A. Kunkel, et al., were Appellees, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to-wit:



IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE R. L. WILLIAMS, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

W. A. KUNKEL, *Complainant,*

SANTA WATSON, J. WHITNEY KING, L. A. SMITH,
HANNAH CANARD BARNETT, TUCKER K. BAR-
NETT, J. C. STONE AND LEWIS C. LAWSON, PRAI-
RIE OIL AND GAS COMPANY, - - - *Defendants.*

HANNAH CANARD BARNETT AND TUCKER K. BARNETT, *Appellants.*

W. A. KUNKEL AND PRAIRIE OIL AND GAS COMPANY, A CORPORATION, *Appellees.*

In The United States District Court for the Eastern District
of Oklahoma. W. A. Kunkel, Complainant, v. Santa Wat-
son, J. Whitney King, L. A. Smith, Hannah Canard Bar-
nett, Tucker K. Barnett, J. C. Stone and Lewis C. Lawson,
Defendants. No.

AMENDED BILL OF COMPLAINT.

To the Honorable District Judge of the United States Court
for the Eastern District of Oklahoma:

Complainant brings this, his Bill of Complaint, against defendants herein, and each of them and states that he is a resident of the City of Bluffton, in the State of Indiana, and a resident and citizen of said State of Indiana; that the de-

fendants, Santa Watson, Hannah Canard Barnett and Tucker K. Barnett are citizens of the State of Oklahoma and are residents of the County of Okfuskee therein; that the defendants J. Whitney King, J. C. Stone and L. A. Smith are citizens of the State of Oklahoma and reside in the County of Muskogee therein; that the defendant Lewis C. Lawson is a citizen of the State of Oklahoma and a resident of the County of Hughes therein; and that each of the defendants is a resident of the Eastern Judicial District for the United States Court in the State of Oklahoma.

Complainant states that the matter in controversy herein, exclusive of interest and costs, exceeds the sum or value of Three Thousand Dollars (\$3,000.00).

Complainant further avers that he is the owner of an absolute fee simple estate, and is now in the quiet and peaceable possession of the following tract of land which is situated in Creek County in the State of Oklahoma and within said Eastern Judicial District for the United States Court in the State of Oklahoma, to-wit:

The North Half of the North Half of Section Twenty-one (21), Township Seventeen (17) North Range Seven (7) East, containing 160 acres, more or less.

Complainant avers that he derives and deraigns his title to said land as follows:

That one Mehaley Watson is duly enrolled upon the final roll of Creek citizens as a female of eleven-sixteenths degree Creek Indian blood, opposite Roll Number M. C. 143; and that during the lifetime of said Mehaley Watson there was set apart and allotted to her as her lawful portion of the lands of the Creek Tribe, the tract of land hereinbefore described; that on the 27th day of March, 1909, there was duly issued in the name of said Mehaley Watson, signed by the Principal Chief of the Creek Nation on the 10th day of March, 1909, and approved by the Secretary of the Interior on the 24th day of March, 1909, a certain patent, whereby and under the terms of which the Northwest Quarter of the Northwest Quarter of said Section Twenty-one (21) was conveyed to said Mehaley Watson, or her heirs as her Creek Indian homestead which deed was delivered to and accepted by the heirs of said Mehaley Watson. That on the same day, to-wit, March 27th, 1909, a further patent was issued in the name of said Mehaley Watson signed by the Principal Chief of the Creek Tribe March 10th, 1909, and approved by the Secretary of the Interior March 24th, 1909, whereby there was conveyed to said Mehaley Watson, or her heirs, as her surplus allot-

ment in the Creek Indian Nation, the remaining portion of the above described land, to-wit: the Northeast Quarter of the Northwest Quarter, and the North Half of the Northeast Quarter of Section Twenty one (21). Township Seventeen (17) North, Range Seven (7) East which deed was delivered to and accepted by the heirs of said Mehaley Watson.

Complainant avers that said Mehaley Watson died in the month of October, 1908, a resident of Hughes County, in the State of Oklahoma, intestate, unmarried and without issue; that said Mehaley Watson was the illegitimate child of the defendant Hannah Canard Barnett, and said Hannah Canard Barnett survived the said Mehaley Watson and inherited the entire fee simple title to the lands above described from said Mehaley Watson; that said Hannah Canard Barnett is a duly enrolled citizen of the Creek Nation, of full Indian blood, she being enrolled upon the final roll of Creek Indian citizens, opposite Roll Number 4574.

That on the 22nd day of March, 1909, and for a good and valuable consideration, to-wit, the sum of Five Hundred Dollars (\$500.00), the defendant, Hannah Canard Barnett, then known as Hannah Canard, made, executed and delivered to one B. O. Sims her certain warranty deed, whereby and under the terms of which the one hundred and sixty-acre tract of land herein first described was conveyed to said Sims, said deed being filed for record with the Register of Deeds for Creek County, Oklahoma, on the 26th day of March, 1909, and by him recorded in Book 31, page 104, of the records of his office.

That on the said day, to-wit, on the 22nd day of March, 1909, and upon the verified petition of the defendant, Hannah Canard Barnett, then known as Hannah Canard, the County Court for Hughes County, Oklahoma—the court having jurisdiction to settle the estate of said Mehaley Watson, deceased—entered its certain order approving the execution and delivery of the deed executed by said Hannah Canard Barnett, then known as Hannah Canard, to said B. O. Sims.

That on the 25th day of October, 1909, said B. O. Sims and Luella Sims, his wife, by their certain warranty deed that day duly made, executed and delivered, conveyed said tract of land to one Clyde Brannan, which deed was filed for record with the Register of Deeds for Creek County, Oklahoma, March 27th, 1912, and by him recorded in Book , page , of the records of his office.

That on the first day of April, 1912, said Clyde Brannan and Luvenia Brannan, his wife, by their warranty deed that day duly made, executed and delivered, conveyed said land

to F. L. Berrian, W. A. Davis, J. A. Abell, H. G. Cheney, J. J. Riner, John Jelinek and A. F. Vandersall, said Berrian, Davis, Abell, Cheney and Riner each taking and acquiring an undivided one-sixth interest in said land, and said Jelinek and Vandersall each taking and acquiring an undivided one-twelfth interest therein; which deed was filed for record with the Register of Deeds for Creek County, Oklahoma, April 5th, 1912, and by him recorded in Book , page , of the records of his office.

That on the first day of May, 1912, said Berrian, Davis, Abell, Cheney, Riner, Jelinek, and Vandersall, by their certain quitclaim deed that day duly made, executed and delivered, conveyed to one W. C. Nelson all of their right, title and interest in and to the North Half of the Northwest Quarter of said Section Twenty-one (21), being a part of the land hereinbefore described, which deed was filed for record with the Register of Deeds for Creek County, Oklahoma, on the 9th day of May, 1912, and by him recorded in Book , page , of the records of his office.

That on the 15th day of July, 1912, John Jelinek and Della Jelinek, his wife, by their quitclaim deed that day duly made, executed and delivered, conveyed to said Clyde Brannan and Luvenia Brannan, all of their right, title and interest in and to the North Half of the Northeast Quarter of Section Twenty-one (21), being a portion of the lands hereinbefore described, which deed was filed for record July 20, 1912, and by said Register of Deeds duly recorded in Book , at page , of the records of his office.

That on the 9th day of July, 1912, said A. F. Vandersall, by his quitclaim deed that day duly made, executed and delivered, conveyed all of his right, title and interest in and to said North Half of the Northeast Quarter of Section Twenty-one, being part of the lands first herein described, to said H. G. Cheney, said deed being filed for record with the Register of Deeds for Creek County, Oklahoma, on the 24th day of July, 1912, and by him recorded in Book , at page , of the records of his office.

That on the 26th day of September, 1912, said H. G. Cheney, by his warranty deed that day duly made, executed and delivered, conveyed to one R. S. Litchfield an undivided one-fourth interest in the North Half of the Northeast Quarter of Section Twenty-one, being part of the lands first herein described, which deed was filed for record with the Register of Deeds for Creek County, Oklahoma, October 1, 1912, and by him recorded in Book 61, at page 421, of the records of his office.

That on the 26th day of September, 1912, said Clyde Brannan and Luvenia Brannan, his wife, by their warranty deed that day duly made, executed and delivered, conveyed to said Litchfield an undivided one-twelfth interest in said North Half of the Northeast Quarter of Section Twenty-one being part of the lands first herein described and the interest acquired by said Brannan from said Jelinek as aforesaid; that said deed was recorded with the Register of Deeds of said Creek County, Oklahoma, October 1st, 1912, in Book 61, at page 422 of the records of his office.

That on the 26th day of September, 1912, said F. L. Berrian, by his warranty deed that day duly made, executed and delivered, conveyed his undivided one-sixth interest in and to the North Half of the Northeast Quarter of Section Twenty-one, being part of the lands first herein described and the entire interest of the said F. L. Berrian, to said R. S. Litchfield, said deed being filed for record with said Register of Deeds October 1st, 1912, and by him recorded in Book 61, at page 422, of the records of his office.

That on said 26th day of September, 1912, said W. A. Davis by his warranty deed that day duly made, executed and delivered, conveyed to said R. S. Litchfield his undivided one-sixth interest in said North Half of the Northeast Quarter of Section Twenty-one, said deed being filed for record on said first day of October, 1912, with said Register of Deeds for Creek County, Oklahoma, and by him recorded in Book 61, at page 424, of the records of his office.

That on said 26th day of September, 1912, said J. J. Riner, by his warranty deed that day duly made, executed and delivered, conveyed his undivided one-sixth interest in said North Half of the Northeast Quarter of said Section Twenty-one, to said R. S. Litchfield, said deed being filed for record October 1st, 1912, and recorded in Book 61, at page 425, with the Register of Deeds of said County.

That on said 26th day of September, 1912, said J. A. Abell, by his warranty deed that day duly made, executed and delivered, conveyed to said R. S. Litchfield his undivided one-sixth interest in said North Half of the Northeast Quarter of Section Twenty-one, said deed being filed for record October 3rd, 1912, with said Register of Deeds and by him recorded in Book 61, at page 434, of the records of his office.

That on the first day of October, 1912, said R. S. Litchfield and Mary H. Litchfield, his wife, by their certain quitclaim deed that day duly made, executed and delivered, conveyed to said H. G. Cheney an undivided one-half interest in

said North Half of the Northeast Quarter of Section Twenty-one, said deed being filed for record December 19, 1912, and the same being recorded in Book 86, at page 135.

That on the 14th day of February, 1913, said W. C. Nelson by his warranty deed that day duly made, executed and delivered, conveyed to said R. S. Litchfield, the North Half of the Northwest Quarter of said section, being part of the lands first herein described, which deed was filed for record February 17th, 1913, the same being recorded in Book 87, at page 269, of the records of said Register of Deeds.

That on the 26th day of March, 1913, said H. G. Cheney, by his quitclaim deed that day duly made, executed and delivered, conveyed to said R. S. Litchfield all of his right, title and interest in and to the entire one hundred and sixty acres of land first herein described, which deed was filed for record with the Register of Deeds for Creek County, Oklahoma, March 26th, 1913, and by him recorded in Book 89, at page 172 of the records of his office.

Complainant avers that by virtue of the deeds and conveyances hereinbefore recited and referred to said R. S. Litchfield became vested with an absolute fee simple title to the entire tract of land referred to in this Bill of Complaint.

Complainant avers that on the 17th day of June, 1913, it was represented to complainant's grantor, R. S. Litchfield, that there was a question of fact as to whether said Mehaley Watson died a resident of Hughes County, Oklahoma, or whether she died a resident of Okfuskee County, Oklahoma. Complainant avers that said Mehaley Watson was in fact a resident of Hughes County, Oklahoma, at the time of her death, but, to meet any question arising from a doubt as to which county Mehaley Watson died a resident, on the 17th day of June, 1913, and upon the verified petition of the defendants, Hannah Canard Barnett, formerly Hannah Canard, and Tucker K. Barnett, the County Court of Okfuskee County, Oklahoma, entered its certain order approving said deed of March 22nd, 1909, executed by said Hannah Canard, now Hannah Caudard Barnett, to B. O. Sims. That upon the approval of said deed as aforesaid, complainant's grantors paid the sum of Two Thousand Dollars (\$2,000.00) as an additional consideration for said deed, which was accepted, and the benefit thereof retained and enjoyed by the defendants Hannah Canard Barnett and Tucker K. Barnett.

That on said 17th day of June, 1913, said B. O. Sims and Luella Sims, his wife, made, executed and delivered their further quitclaim deed, whereby and under the terms of which

they conveyed to R. S. Litchfield all of the land first herein described, which deed was filed for record with the Register of Deeds for said Creek County, on the 18th day of June, 1913, and by him recorded in Book 91, at page 193, of the records of his office.

Complainant avers that on the 29th day of October, 1913, R. S. Litchfield and Mary H. Litchfield, his wife, by their certain warranty deed that day made, executed and delivered, conveyed to said H. C. Cheney an undivided seven-sixteenth interest in the North Half of the Northeast Quarter of said Section Twenty-one, being part of the land first herein described, said deed being filed for record February 21, 1913, and recorded in Book 93, at page 196, with the Register of Deeds for Creek County, Oklahoma.

That on said 29th day of October, 1913, said R. S. Litchfield and Mary H. Litchfield, his wife, by their certain warranty [] that day made, executed and delivered, conveyed an undivided one-fourth interest in the North Half of the Northwest Quarter of said Section Twenty-one, being part of the land first herein described, to H. G. Cheney, said deed being filed for record November 21, 1913, the same being recorded in Book 93, at page 195, with said Register of Deeds for Creek County, Oklahoma.

That on the first day of November, 1913, R. S. Litchfield and Mary H. Litchfield, his wife, made, executed and delivered their special warranty deed to one T. J. Booth, whereby under the terms of which there was conveyed to said Booth an undivided one-eighth interest in the entire one hundred and sixty acres of land described herein, said deed being filed for record with the Register of Deeds for Creek County, Oklahoma, April 3, 1914, and by him recorded in Book 95, at page 443, of the records of his office.

That on the 6th day of May, 1914, said R. S. Litchfield and Mary H. Litchfield, his wife, Thomas J. Booth and Laura C. Booth, his wife, and H. G. Cheney and Ella K. Cheney, his wife, by their certain special warranty deed that day duly made, executed and delivered, conveyed the entire one hundred and sixty-acre tract of land herein described, and other lands, to this complainant, which deed was filed for record May 13, 1914, and recorded in Book 99, at page 454, with the Register of Deeds of said County.

That at all times since said sixth day of May, 1914, this complainant has been the owner of an absolute fee simple title in and to the lands herein described, and at all times since then and now is in the quiet and peaceable possession

of said land. That on the 12th day of May, 1914, complainant executed and delivered to The Prairie Oil and Gas Company, a corporation, a lease for oil and gas mining purposes, covering said lands, and said Prairie Oil and Gas Company has entered upon said lands by virtue of said lease, and has drilled and operated the same for oil and gas mining purposes, yielding and paying to this complainant the rentals and royalties accruing by virtue of said lease.

Complainant avers:

(a) That the defendants herein, and each of them, assert some right, title or interest in and to said lands, the exact nature and extent of which is to this complainant unknown; and complainant further avers that said parties by their acts, words and declarations are asserting some right, title or interest in and to said lands which is adverse and hostile to the title of this complainant as herein set forth.

(b) That said defendants have entered into certain leases, contracts and conveyances to and among one another, whereby said parties, respectively, are asserting some right, title or interest in and to said lands which is adverse and hostile to the title of this complainant as herein set forth.

(c) That certain of said defendants, asserting title as aforesaid, have entered into contract with certain other of the defendants herein, as complainant is informed and believes, the exact nature and purport of which is to this complainant unknown, but complainant avers on information and belief that said contracts and each of them provide for the institution of a suit or suits against this complainant, said suits to be predicated and based upon the assertion or some right, title or interest of the defendants adverse and hostile to the title of this complainant as herein set forth.

(d) That the defendants and each of them, unless restrained by the decree of this court, as complainant is informed and believes, will enter into other and further contracts, deeds and conveyances the effect of which will be to cloud the title of complainant with respect to said lands.

(e) That by reason of the matters and things hereinbefore set forth, the title of this complainant to said lands has been clouded by the adverse claims and demands of the defendants, and said title will be further clouded unless defendants are restrained in the manner herein prayed.

Wherefore, the premises considered, complainant prays the following relief:

First: That the defendants, and each of them, be required to answer herein, setting forth such right, title or interest as is claimed by them with respect to said lands, and upon failure upon their part so to do, that they be adjudged to have no right, title or interest in and to said lands and that thereafter they and those claiming under them, be foreclosed and barred from ever asserting any right, title or interest in said lands or any part thereof.

Second: That a temporary injunction issue herein, restraining the defendants, and each of them, from clouding complainant's title in the manner herein alleged, and that upon final hearing hereof, such injunction be made permanent.

Third: That the title of complainant with respect to said lands be adjudged, established and determined, and a decree enter herein, quieting the title of this complainant with respect to any adverse claim, right, title or interest of the defendants or any one of them, in and to said lands.

Fourth: That complainant have such further relief as he is entitled to in the premises, and his costs laid out herein and expended.

Complainant further prays that a writ of subpoena issue herein directed to the defendants and each of them, in conformity with law and the equity rules in that respect made and provided.

ROGER S. SHERMAN,
JAMES S. VEASEY,
JERE P. O'MEARA,
J. B. PATTERSON,
Solicitors for Complainant.

State of Oklahoma, County of—ss.

W. A. Kunkle, being first duly sworn, states on oath that he has read the foregoing Bill of Complaint, and that the matters and things therein set forth are true.

.....
Subscribed and sworn to before me this day of March, A. D. 1915. Notary Public.
My Commission expires

Endorsed: Filed Mar 29, 1915. R. P. Harrison, Clerk
U. S. District Court.

(Exhibits to Answer of Tucker K. Barnett and Hannah Canard Barnett. Filed April 12, 1915.)

Exhibit No. 1.

This agreement, made and entered into in duplicate, the 27th day of March, A. D. 1913, by and between Hannah Canard Barnett, joined by her husband, Tucker K. Barnett of Okfuskee County, Oklahoma, parties of the first part, lessors, and George C. Crump of Hughes County, Oklahoma, party of the second part, lessee.

Witnesseth, That the said party of the first part, for and in consideration of the sum of Eleven Hundred and Fifty Dollars, paid and to be paid as follows: \$250.00 cash in hand, receipt hereby acknowledged and \$900.00 to be paid at time and on conditions expressed in written contract of this date, between the parties hereto and the further consideration hereinafter recited, and agreements hereinafter contained on the part of party of the second part, to be paid, kept and performed, has granted, demised, leased and let and by these presents, does grant, demise, lease and let unto the said second party, his heirs, successors or assigns, for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, and of building tanks, powers, stations and structures thereon to produce and take care of said products, all that certain tract of land situated in the County of Creek, State of Oklahoma, described as follows, to-wit:

Northeast quarter of Northeast quarter and Northeast quarter of Section 21, Township 17 North and Range 7 East, I. B. & M. containing 80 acres, more or less.

The further considerations above mentioned are the employment and services of said Geo. C. Crump as per the terms and conditions of the written contract of said parties hereto of this date above referred to, which contract is herewith made a part hereof.

The \$900.00 consideration above referred to is to be paid to Hannah Canard Barnett, she being the surviving lawful mother and sole heir at law of Mehaley Watson, deceased, allottee of the property above described.

Wherever the words parties, party, lessors, lessor, lessees or lessee, or either of them, appear in this instrument, shall be considered as expressing the singular or plural as may be proper.

It is agreed that this lease shall remain in force for the term of 99 years from this date, and as long thereafter as oil or gas, or either of them is produced therefrom by the party of the second part, its successors or assigns.

In consideration of the premises the said party of the second part covenants and agrees:

That there shall be no assignment of this contract or any right thereunder until the title to the allotment of McHaley Watson, deceased, shall have been quieted as per the terms and conditions of the written contract hereinabove referred to.

Second party shall pay for damages caused by him to growing crops on said land; the party of the second part shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

The party of the second part shall not be bound by any change in the ownership of said land until duly notified by any change, either by notice in writing duly signed by the parties to the instrument of conveyance, or by the receipt of the original instrument of conveyance or a duly certified copy thereof.

All payments which may fall due under this lease may be made directly to the lessor, or deposited to the credit of said Hannah Canard Barnett in Farmers' State Bank, Hollenville, Oklahoma.

The party of the second part, his heirs, successors, or assigns, shall have the right, at any time, on the payment of one dollar, to the party of the first part, their heirs or assigns, to surrender this lease for cancellation, after which all payments and liabilities thereafter to accrue under and by virtue of its terms, shall cease and determine; provided, this surrender clause and the option therein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law, or equity, by the lessee to enforce this lease, or any of its terms, or to recover possession of the leased land or any part thereof, against or from the lessor, their heirs, executors, administrators, successors or assigns, or any other person or persons.

All covenants and agreements herein set forth between the parties hereto, shall extend to their heirs, executors, administrators, successors or assigns.

Witness the following sig. and seals.

Hannah Canard Barnett,
Tucker K. Barnett,
Geo. C. Crump.

State of Oklahoma, County of Okfuskee, ss.

On this 27th day of March, 1913, before me the undersigned, a Notary Public within and for the County and State aforesaid, personally appeared Hannah Canard Barnett, Tucker K. Barnett, her husband, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal, the day and year last above written. B. F. Harmon, Notary Public. (Seal.) My Commission expires July 12, 1913.

Exhibit No. 2.

CERTIFICATE.

State of Oklahoma, County of Creek—ss

I, W. R. Casteel, Court Clerk in and for Creek County, State of Oklahoma, hereby certify the within to be a true copy of the petition in Case Number 2927, Hannah Canard Barnett vs. B. O. Sims et al. in the District Court, as the same appears on file and record in my office.

Dated this 11th day of February, 1915. W. R. Casteel
Court Clerk. By H. H. Burns, Deputy. (Seal)

In the District Court in and for Creek County, State of Oklahoma, at Sapulpa. Hannah Canard Barnett, Plaintiff vs. B. O. Sims, Clyde Brannan, W. C. Nelson, Lovenia Brannan, F. L. Berrian, W. C. Davis, J. A. Abell, H. G. Cheney, J. J. Riner, John Jelinek, A. F. Vandersall, R. S. Litchfield, Della Jelinek, and Mary Litchfield, Defendants.

PETITION.

1. Comes now Hannah Canard Barnett and states to the court that she is duly enrolled as Hannah Canard and that she appears upon the approved rolls as Hannah Canard, that subsequent to her enrollment, she married Tucker K. Barnett and her name is now Hannah Canard Barnett.

2. That the plaintiff has the legal estate in fee simple, and the equitable estate in and to the following described real estate, being and located in Creek County, Oklahoma, and described as follows, to-wit:

The North Half of the North Half of Section Twenty-one (21) Township Seventeen (17) North, Range Seven (7) East,

and that the plaintiff is entitled to the immediate possession of the same.

3. Plaintiff further states that she has been damaged in the sum of Ten Thousand Dollars (\$10,000.00) by said defendants unlawfully withholding said possession.

4. Plaintiff further states that said defendants have so unlawfully kept plaintiff out of possession since the 27th day of March, 1913, and that the defendants have been in continuous possession since said time.

Wherefore, Plaintiff prays judgment for the possession of said premises and for Ten Thousand Dollars (\$10,000.00) damages, for withholding possession and for costs and all proper relief.

Second Count.

Comes now Hannah Canard Barnett and for her second cause of action herein alleges and states:

1. That Plaintiff is the legal owner in fee simple and entitled to the immediate possession of the following described premises situated in Creek County, Oklahoma, and described as follows, to-wit:

The North Half of the North Half of Section Twenty-one Township Seventeen North, Range Seven East,

and that said land is in a wild state of cultivation, with no improvements on said land at all, and that plaintiff derives her title to said premises as follows: That one Mehaley Watson was a Creek Indian, duly enrolled as such and her name appears upon the approved rolls of the Five Civilized Tribes, Roll No. 143, and that the said Mehaley Watson died on the 14th day of November, 1908, intestate, and without issue, being a minor of the age of about three years, that at the time of the death of the said Mehaley Watson she left no father, but that said Hannah Canard Barnett is her mother, and only heir at law, entitled to share in the estate of Mehaley Watson.

2. Plaintiff further states that prior to the death of the said Mehaley Watson, there was allotted to the said Mehaley Watson as her part of the distributive share of the lands held in common by the Muskogee or Creek Tribe of Indians, the North Half of the North Half of Section Twenty-one, Township Seventeen North, Range Seven East, in Creek Nation, Oklahoma, and that the patent was duly issued, which is in the possession of the defendants, and cannot, or a copy thereof, be made a part of this petition. That by virtue of the relationship of the said Mehaley Watson to the plaintiff herein, the plaintiff is the absolute owner of the above described land.

3. That the defendants and each of them claim an estate in the North Half of the North Half of Section Twenty-one, Township Seventeen North, Range Seven East in Creek County, Oklahoma, adverse to the plaintiff, the nature of which said claim is to the plaintiff unknown.

4. Plaintiff further states that he has employed George C. Crump to duly prosecute this action to a final determination, and that said employment consists of a written contract made on the 27th day of March, 1913, and duly approved by the County Court of Okfuskee County, Oklahoma, as by law required; that an original carbon copy of said contract is hereto attached, marked Exhibit A, and made a part hereof.

Wherefore, Plaintiff prays that the defendants and each of them be required to set forth the nature of their respective claims to said premises, that this court decree that plaintiff's claim to and title in said premises is valid and perfect, and that defendants and each and all of them have no right to any claim thereto, and that defendants and each and everyone of them have no estate or interest in or to said premises or any part thereof, and that they and each of them be perpetually barred and enjoined from asserting any claim to said premises adverse to the plaintiff, and for such other relief as may be equitable and proper, and for costs of this action and for all proper relief.

George C. Crump and
J. L. Skinner,
Attorneys for Plaintiff.

CONTRACT.

State of Oklahoma, Okfuskee County—ss.

This contract and agreement made and entered into in quadruplicate on this the 27th day of March, 1913, by and between Hannah Canard Barnett, joined by her husband, Tucker K. Barnett, of Okfuskee County, Oklahoma, parties of the first part, and Geo. C. Crump of Hughes County, Oklahoma, party of the second part, Witnesseth:

I.

That said Hannah Canard Barnett, as surviving lawful mother and sole heir-at-law of Mehaley Watson, deceased, is the owner of the North Half of the North Half of Section Twenty-one (21), Township Seventeen (17) and Range Seven (7), of the Indian Base and Meridian, in Creek County, Oklahoma.

II.

That on this day, the said Hannah Canard Barnett, joined

by her said husband, Tucker K. Barnett, has executed to said Geo. C. Crump for the full term of ninety-nine years an oil and gas mining lease on the following portions of the real estate above described, to-wit: The Northeast Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section 21, Twp. 17 North, Range 7 East, in Creek County, Oklahoma, for a cash consideration of \$250.00, and a further consideration of \$900.00 to be paid as and at the time as hereinafter recited. Said Oil and Gas Lease is made subject to the approval thereof by the County Court of Okfuskee County, Oklahoma.

III.

The said party of the first part hereby employ the services of said Geo. C. Crump as attorney for the purpose of bringing immediate suit in the proper court, and prosecuting the same to the final determination with all due diligence, for the purpose of quieting the fee simple title to all of the property described in Section "1" inclusive, subject only to the oil and gas lease hereinabove referred to on a part of said property, such suit to be instituted and prosecuted as above indicated by said Crump at his own costs and expenses, neither of said first parties to be liable for any attorney fee, costs or expenses of any kind in such litigation or in any matter incident to said litigation or in any matter incident to the quieting of said title, but all of same shall be borne personally by said Crump, without reimbursement or liability of any kind or in any manner by or on the part of either of the first parties.

IV.

That no settlement, adjustment, dismissal or compromise of any kind of said suit shall be made by or be binding upon either of the parties hereto, or entered in any court, except with the express approval of the County Court of Okfuskee County, Oklahoma, and this clause is a material part of the consideration of this contract. The said Hannah Canard Barnett agrees to allow the use of her name as party plaintiff in the prosecution of all rights under this contract or defendant as the case may be.

V.

That when proper final decree quieting said fee simple title as aforesaid in said Hannah Canard Barnett is made and entered in the court of proper jurisdiction (and such decree shall also contain a clause cancelling all adverse or hostile conveyances), the above recited additional consideration of \$900.00 for said oil and gas lease to said Crump shall immediately thereupon be due and payable in cash by said Crump to

said Hannah Canard Barnett, and said Crump agrees to immediately thereupon pay the full sum of said \$900.00 net to said Hannah Canard Barnett.

VI.

That a copy of this contract shall be filed with the court in which the suit hereinabove referred to is filed.

VII.

This contract is made and entered into subject to its approval by the County Court of Okfuskee County, Oklahoma.

VIII.

All the terms, conditions, stipulations, and agreements, embodied in this contract and agreement shall extend to and be binding upon the heirs, executors, administrators, and assigns, of all the parties hereto, equally as upon the parties themselves.

In witness whereof, we hereunto set our hands, at Okemah, Oklahoma, on this the 27th day of March, 1913.

Hannah Canard Barnett,

Tucker K. Barnett,

Parties of the first part

Witnessed by:

J. L. Nerman,

Okemah, Oklahoma.

Geo. C. Crump,

Geo. Canard,

Dustin, Oklahoma.

Party of the second part.

State of Oklahoma, Okfuskee County—ss.

Before me, B. F. Harman, a Notary Public in and for said County and State, on this the 27th day of March, 1913, personally appeared Hannah Cannard Barnett and Tucker K. Barnett, her husband, and Geo. C. Crump, to me well known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written, B. F. Harman, Notary Public. My Commission expires July 12th, 1913. (Seal).

The within and foregoing contract and agreement has been fully examined and investigated and is on this the 27th day of March, 1913, fully approved and confirmed by the County Court of Okfuskee County, Oklahoma.

(C. J. Seal)

A. P. Smith,
Judge of said County Court.

No. 2927.—Hannah Canard Barnett, Plff., vs. B. O. Sims, et al., Dfts. Petition. Received and filed this 31 day of Mch., 1913, W. R. Casteel, District Clerk, By Deputy. "Lien Claimed." Geo. C. Crump, J. L. Skinner, Attorneys for Plaintiff.

Exhibit No. 3.

CERTIFICATE.

State of Oklahoma, County of Creek—ss

I, W. R. Casteel, Court Clerk in and for Creek County, State of Oklahoma, hereby certify the within to be a true copy of the Disclaimer in Case Number 2927, Hannah Barnett, nee Hannah Canard, vs. B. O. Sims et al., in the District Court, as the same appearson on file and record in my office.

Dated this 11th day of February, 1915. W. R. Casteel
Court Clerk. By H. H. Burns, Deputy. (Seal)

In the District Court of Creek County, Oklahoma. Hannah Barnett, nee Hannah Canard, Plaintiff, vs. B. O. *Simms*, et al., Defendants.

DISCLAIMER.

Comes now the defendant B. O. *Simms*, and disclaims any title or interest in the real estate mentioned in the petition of the plaintiff

He further states and disclaims any title or interest in the real estate at the time of filing of the petition herein.

Wherefore, he asks that plaintiff's bill be dismissed as to him with costs to plaintiff.

C. T. Huddleston &
J. B. Patterson,
Attorneys for Defendant.

No. 2927.—Hannah Barnett, nee Hannah Canard, Plaintiff, vs. B. O. Sims, et al., Defendant. Disclaimer of B. O. Sims. Received and filed on May 2, 1913. W. R. Casteel, District Clerk, John W. Blue, Deputy. C. T. Huddleston & J. B. Patterson, Attorneys for Defendant.

Exhibit No. 4.

CERTIFICATE OF TRUE COPY

State of Oklahoma, County of Creek—ss

I, Gus L. Corey, County Clerk of Creek County, State of

Oklahoma, do hereby certify that the foregoing is a true copy of No. 4316, as the same appears on the records in this office. Filed 18 day of June, 1913, at 8 o'clock A. M., and recorded in volume 85 at page 458.

Witness my hand and seal at Sapulpa, Creek County, Oklahoma, this, the 15 day of Feb., 1915. Gus L. Corey, County Clerk. By Deputy. (Seal.) (10c revenue stamp.)

4316

State of Oklahoma, Okfuskee County—ss.

This agreement made and entered into on this the 26th day of May, 1913, by and between George C. Crump, party of the first part, and R. S. Litchfield, party of the second part, Witnesseth:

That, Whereas, on the 27th day of March, 1913, for the consideration therein named and under order of approval of the County Court of Okfuskee County, Oklahoma, Hannah Canard Barnett and Tucker K. Barnett, as Lessors, made, executed, acknowledged and delivered unto George C. Crump, as Lessee, an Oil and Gas Mining Lease, which said Lease was approved by said Court on the 27th day of March, 1913, was filed for record in the office of the Register of Deeds for Creek County, Oklahoma, on April 2nd, 1913, and was duly recorded in Book 89 at page 244, of the records thereof, thereby conveying for oil and gas mining purposes for the term of 99 years and as much longer thereafter as oil and gas or either are found in paying quantities, the following described real estate and premises located and situated in Creek County, Oklahoma, to-wit:

The North Half (N2) of the North Half (N2) of Section Twenty-one (21), Township Seventeen (17) North, Range Seven(7) East of the Indian Base and Meridian; and

Whereas, I, the said George C. Crump, am now the owner and holder of said oil and gas mining lease.

Now, therefore, for and in consideration of the sum of One Dollar and other good and valuable considerations to me well and truly paid, the receipt of which is hereby acknowledged, and the covenants and agreements to be kept and performed by the said party of the second part, have sold, granted conveyed, set over, transferred and assigned, and by these presents do hereby sell, grant, convey, set over transfer and assign unto the said party of the second part, his heirs and assigns, all of my right, title and interest in and to the above mentioned and described oil and gas mining lease and in and to the property rights of property interest, powers and pos-

sessions of every kind therein conveyed, all and singular, subject, however, to the limitations, restrictions, and liabilities therein imposed, insofar as the same effects the Northeast Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of said Section Twenty-one (21), Township Seventeen (17) North, Range Seven (7) East of the Indian Base and Meridian.

In testimony whereof, I have hereunto set my hand on this the 26th day of May, 1913.

Geo. C. Crump.

State of Oklahoma, Okfuskee County—ss.

Before me, L. T. Newlon, a Notary Public in and for said County and State, on this the 26th day of May, 1913, personally appeared Geo. C. Crump, to me known to be the identical person who executed the same as his free and voluntary act and deed for the uses and purposes therein set forth. L. T. Newlon, a Notary Public. (Seal.) My Commission expires May 26, 1914.

State of Oklahoma, County of Creek—ss

This instrument was filed in my office for record on the 18 day of June, A. D. 1913, at 10 o'clock A. M., duly recorded in Book 85, at page 458. Huber Hughes, Recorder of Deeds.

Exhibit No. 5.

CERTIFICATE OF TRUE COPY.

State of Oklahoma, County of Creek—ss

I, Gus L. Corey, County Clerk of Creek County, State of Oklahoma, do certify that the foregoing is a true copy of Quit Claim Deed No. 3417 as the same appears on the records of this office. Filed 18 day of June, 1913, at 10 o'clock A. M. and recorded in volume 85, at page 459.

Witness my hand and seal at Sapulpa, Creek County, Oklahoma, this the 15 day of Feb., 1915. Gus L. Corey, County Clerk. By....., Deputy. (Seal) (10c revenue stamp.)

QUITCLAIM DEED. 4317.

This indenture, Made this 26th day of May, A. D. 1913, between Geo. C. Crump, of the first part, and R. S. Litchfield of the second part. Witnesseth, That the said party of the first part in consideration of the sum of One Dollar and other good and valuable considerations, to him paid, the receipt whereof is hereby acknowledged, has hereby remised, released, conveyed and quitclaimed, and by these presents does, quit-

claim unto the said party of the second part, and to his heirs and assigns forever all his right, title, interest, estate, claim and demand, both at law and equity, or in and to all the following property, to-wit:

The North Half (N $\frac{1}{2}$) of the North Half (N $\frac{1}{2}$) of Section Twenty-one, Township Seventeen (17) North, Range Seven (7) East of the Indian Base and Meridian, in Creek County, Oklahoma.

(The grantor herein specifically covenants and agrees to and with the grantees herein that no part of the above described land is now or ever has been a part of his homestead,) together with all and singular the hereditaments and appurteances thereunto belonging.

To Have and To Hold, The above described premises unto the said R. S. Litchfield, heirs and assigns, so neither he, the said G. C. Crump, or any person in his name or behalf, shall or will hereafter claim or demand any right or title to the said premises or any part thereof; but they and every one of them shall be excluded and forever barred.

In Witness Whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written

Geo. C. Crump.

State of Oklahoma, Okfuskee County—ss.

On this 26 day of May, 1913, before me, a Notary Public, within and for said County and State, personally appeared Geo. C. Crump, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above set forth. L. T. Newlon, Notary Public. (Seal.) My Commission expires May 26, 1914.

State of Oklahoma, County of Creek—ss.

This instrument was filed for record in the Register of Deeds office of the County and State aforesaid on the 18 day of June, 1913, at 10 o'clock A. M., and recorded in Book 85, at page 459. Huber Hughes, Register of Deeds.

Exhibit No. 6.

In the United States Court for the Eastern District of Oklahoma. Hannah Canard Barnett, Plaintiff, vs. B. O. Sims, Clyde Brannan, W. C. Nelson, Lovenia Brannan, F. L. Berrian, W. C. Davis, J. A. Abell, H. G. Cheney, J. J.

Rimer, John Jelinek, A. F. Valdersol, R. S. Litchfield,
Della Jelinek, and Mary Litchfield, Defendants.—No. . . .

STIPULATION.

It Is Hereby Stipulated and Agreed Between the plaintiff, Hannah Canard Barnett, and the defendant R. S. Litchfield, that a decree shall be entered in this court dismissing the plaintiff's petition with prejudice, and quieting title in the defendant, R. S. Litchfield.

It Is Further Stipulated and Agreed That a similar decree shall be made and entered in the District Court of Creek County, Oklahoma, quieting the title in the same defendant.

It Is Understood and Agreed That the purpose of having the decree entered in each of the courts is to avoid any possible question that may hereafter arise in reference to the jurisdiction of either of said courts.

It Is Further Stipulated That there is this day filed in the United States Court for the Eastern District of Oklahoma and answer in a Cross Petition of the defendant, R. S. Litchfield, denying the allegations of the plaintiff's petition and praying that the title of said land be quieted, and that a similar pleading is filed in the District Court of Creek County, Oklahoma.

This . . . day of June, 1913.

G. C. Crump & J. L. Skinner,
Attorneys for Plaintiff.

Sherman, Veasy & O'Meara,

(Filed July 3, 1913.)

For Defts.

United States of America, Eastern District of Oklahoma—ss.

I. R. P. Harrison, Clerk of the District Court of the United States of America for the Eastern District of Oklahoma, do hereby certify the within and foregoing to be a true, full and correct copy of a Stipulation filed in the case of Hannah Canard Barnett v. B. O. Sims, et al., No. 2033, on the 3rd day of July, 1913, as the same remains on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Muskogee, in said District, this 24th day of February, 1915. R. P. Harrison, Clerk. By L. S. Trimble, Deputy. (Seal.) (10¢ revenue stamp.)

Exhibit No. 7.

CERTIFICATE.

State of Oklahoma, County of Creek—ss.

I, W. R. Casteel, Court Clerk in and for Creek County,

State of Oklahoma, hereby certify the within to be a true copy of the Stipulation in Case Number 2927. Hannah Canard Barnett, v. B. O. Sims, et al., in the District Court, as the same appears on file and record in my office.

Dated this 11th day of February, 1915. W. R. Casteel
Court Clerk. By H. H. Burns, Deputy. (Seal)

In the United States Court for the Eastern District of Oklahoma. Hannah Canard Barnett, Plaintiff, vs. B. O. Sims, Clyde Brannan, W. C. Nelson, Lovenia Brannan, F. L. Berrian, W. C. Davis, J. A. Abell, H. G. Cheney, J. J. Riner, John Jelinek, A. F. Vabdersoll, R. S. Litchfield, Della Jelinek, and Mary Litchfield, Defendants.—No. . . .

STIPULATION.

It Is Hereby Stipulated and Agreed Between the plaintiff, Hannah Canard Barnett, and the defendant, R. S. Litchfield, that a decree shall be entered in this court dismissing the plaintiff's petition with prejudice, and quieting title in the defendant, R. S. Litchfield.

It Is Further Stipulated and Agreed That a similar decree shall be made and entered in the District Court of Creek County, Oklahoma, quieting the title in the same defendant.

It Is Understood and Agreed That the purpose of having the decree entered in each of the courts is to avoid any possible question that may hereafter arise in reference to the jurisdiction of either of said courts.

It Is Further Stipulated That there is this day filed in the United States Court for the Eastern District of Oklahoma an answer in a cross-petition of the defendant, R. S. Litchfield, denying the allegations of the plaintiff's petition and praying that the title of said land be quieted, and that a similar pleading is filed in the District Court of Creek County, Oklahoma.

This 23 day of June, 1913.

G. C. Crump,

J. L. Skinner,

Atty. for Plaintiff.

Sherman, Veasey & O'Meara,

For Defts. Lenchfrieds.

No. 2927. Hannah Canard Barnett, Plaintiff, v. B. O. Sims, et al., Defendants. Stipulation. Filed in open court, 11 of July, 1913. W. R. Casteel, District Clerk.

Law offices of Sherman, Veasey & O'Meara, 206-7-8 and 9, Palace Building, Tulsa, Okla.

Exhibit No. 8.

In the United States Court for the Eastern District of Oklahoma. Hannah Canard Barnett, Plaintiff vs. B. O. Sims, Clyde Brantlan, W. C. Nelson, Lovenia Brannan, F. L. Berrian, W. C. Davis, J. A. Abell, H. G. Cheney, J. J. Riner, John Helinek, A. F. Vabdersoll, R. S. Litchfield, Della Jeliner, and Mary Litchfield, Defendants.—No.2033.

JOURNAL ENTRY OF DECREE.

Now on this 3rd day of July, 1913, comes Hannah Canard Barnett, by her attorney, George C. Crump, and comes the defendant, R. S. Litchfield, by his attorneys Sherman, Veasey & O'Meara, and present to the court a stipulation for an agreed decree settling the relative rights of the parties to this litigation, and move the court to file said stipulation and enter judgment in accordance therewith, and on the joint motion of the plaintiff and defendant said stipulation is filed and made a part of the record of this case.

Now comes the defendant, R. S. Litchfield, and files his answer denying all the material allegations of the plaintiff's petition, and also makes said answer a Cross Petition against the plaintiff in which he set forth that he is the owner and entitled to possession of the property below described, and shows to the court that since the beginning of this suit he has obtained a quitclaim deed from his co-defendant, Mary Litchfield, and that she has no further interest in this litigation; and also shows to the court that the deeds under which he claims have been properly approved by the proper County Court and properly filed for record.

Now this cause coming on for hearing on the pleadings, exhibits, and stipulations, above referred to, It Is Considered, Ordered and Decreed That the Defendant, R. S. Litchfield, is the owner in fee simple of the North Half (1/2) of the North Half (1/2) of Section Twenty-one (21), Township Seventeen (17) North, Range Seven (7) East, and that the plaintiff has no title or interest therein, or thereto.

It Is Further Considered, Ordered and Decreed That the title of the defendant, R. S. Litchfield, is quieted against the plaintiff, and against all persons claiming from, through, or under her in any way.

It Is Further Considered, Ordered and Adjudged That the plaintiff and all persons claiming through or under her

be hereby enjoined and restrained from setting up any further title to the lands above described, or from executing, delivering, or placing on record any instrument or conveyance which would have the apparent effect of questioning or clouding in any way the title of the defendant hereto.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed in open court, July 3, 1913. R. P. Harrison, Clerk.

United States of America, Eastern District of Oklahoma—ss.

I. R. P. Harrison, Clerk of the District Court of the United States of America for the Eastern District of Oklahoma, do hereby certify the within and foregoing to be a true, full and correct copy of the Journal Entry of Decree in the case of Hannah Canard Barnett v. B. O. Sims, et al., No. 2033, as the same was filed on the 3rd day of July, 1913, and is of record in my office in Journal No. 5, at page 143.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Muskogee, in said district, this 24th day of February, 1915. R. P. Harrison, Clerk. By L. S. Trimble, Deputy. (Seal.) (10c revenue stamp.)

Exhibit No. 9.

Certificate.

State of Oklahoma, County of Creek—ss.

I, W. R. Casteel, Court Clerk in and for Creek County, State of Oklahoma, hereby certify the within to be a true copy of the Journal Entry of Decree in Case Number 2927. Hannah Canard Barnett v. B. O. Sims, et al. In the District Court, as the same appears on file and record in my office.

Dated this 11th day of February, 1915. W. R. Casteel Court Clerk. By H. H. Burns, Deputy. (Seal)

In the District Court in and for Creek County, Oklahoma. Hannah Canard Barnett, Plaintiff, vs. B. O. Sims, Clyde Brannan, W. C. Nelson, Lovenia Brannan, F. L. Berrian, W. C. Davis, J. A. Abell, H. G. Cheney, J. J. Riner, John Jelinek, A. F. Vandersol, R. S. Litchfield, Della Jelinek, and Mary Litchfield, Defendants.—No.

JOURNAL ENTRY OF DECREE.

Now on this 11 day of July, 1913, comes Hannah Canard Barnett, by her attorney, George C. Crump, and comes the defendant, R. S. Litchfield, by his attorneys, Sherman Veasey

& O'Meara, and present to the court a stipulation for an agreed decree settling the relative rights of the parties to this litigation, and move the court to file said stipulation and enter judgment in accordance therewith, and on the joint motion of the plaintiff and defendant said stipulation is filed and made a part of the record of this case.

Now comes the defendant, R. S. Litchfield, and files his Answer, denying all the material allegations of the plaintiff's petition, and also makes said Answer a Cross Petition against the plaintiff in which he sets forth that he is the owner and entitled to possession of the property below described, and shows to the court that since the beginning of this suit he has obtained a quitclaim deed from his co-defendant, Mary Litchfield, and that she has no further interest in this litigation: and also shows to the court that the deeds under which he claims have been properly approved by the proper County Court, and properly filed for record.

Now this cause coming on for hearing on the pleadings, exhibits and stipulations, above referred to, It Is Considered, Ordered and Decreed That the defendant, R. S. Litchfield, is the owner in fee simple of the North Half (1/2) of the North Half (1/2) of Section Twenty-one (21), Township Seventeen (17) North, Range Seven (7) East, and that the plaintiff has no title or interest therein or thereto.

It Is Further Considered, Ordered and Decreed That the title of the defendant, R. S. Litchfield, is quieted against the plaintiff and against all persons claiming from, through, or under her in any way.

It Is Further Considered, Ordered and Adjudged That the plaintiff and all persons claiming through or under her be hereby enjoined and restrained from setting up any further title to the lands above described, or from executing, delivering, or placing on record any instrument or conveyance which would have the apparent effect of questioning or clouding in any way the title of the defendant hereto.

Wade S. Stanfield, Judge.

No. 2927. Hannah Canard Barnett, Plaintiff, v. B. O. Sims, et al., Defendants. Journal Entry of Decree.

Filed in open court, 11 day of July, 1913. W. R. Casteel, District Clerk.

Law office of Sherman, Veasey & O'Meara, 206-7-8 and 9, Palace Building, Tulsa, Okla.

*Minnesota State J. Co.
St. Paul, Minn.*

Certificate of True Copy.

State of Oklahoma, Okfuskee County—ss.

I, B. F. Harman, Court Clerk in and for the County and State aforesaid, do hereby certify that the above and foregoing to be a full, true and complete copy of the Adjourning Order on May 20, 1913; the Adjourning Order on July 7, 1913, and Convening Order on October 6th, 1913, in the Okfuskee County Court, as the same appears on file and of record in my office.

Witness my hand and seal of said court, this 9th day of Feb., 1915. B. F. Harman, Court Clerk. By E. M. Kennedy, Deputy. (Seal.) (10¢ revenue stamp.)

Exhibit No. 10.

In the County Court of Okfuskee County.

Now on this 20th day of May, A. D. 1913, there appearing no further business to come before the court, it is therefore ordered that County Court be and the same is hereby adjourned for the term. A. P. Smith, County Judge. Natt D. Dossey, Clerk of the Court. Attest:

Exhibit No. 11.

In The County Court of Okfuskee County.

New on this 7th day of July, A. D. 1913, the same being the first day of July, 1913, term, and on account of the serious illness of the Hon. A. P. Smith, County Judge, the Sheriff S. M. Wilson and the Clerk of the County Court, Natt D. Dossey, adjourned court for the term....., Sheriff of Okfuskee County, Natt D. Dossey, Clerk of the County Court. (Seal.)

Exhibit No. 12.

In the County Court of Okfuskee County.

State of Oklahoma, Okfuskee County—ss.

Now on this 6th day of October, A. D. 1913, County Court is hereby convened for the dispatch of such business as may legally come before it.

Present:

Hon. T. H. Wren, County Judge.

Tom Hazlewood, County Attorney.

S. M. Wilson, Sheriff.

Natt D. Dossey, Clerk of the County Court.

Bertha Roberts, Court Reporter.

The following, among other proceedings were had, to-wit:

Exhibit No. 13.

Certificate of True Copy.

State of Oklahoma, County of Creek—ss.

I, Gus L. Corey, County Clerk of Creek County, State of Oklahoma, do hereby certify that the foregoing is a true copy of the Quit Claim Deed from B. O. Sims et ux., to R. S. Litchfield, as the same appears on the records of this office. Filed 18 day of June, 1913, at 10 o'clock A. M., and recorded in volume 91, at page 193.

Witness my hand and seal at Sapulpa, Creek County, Oklahoma, this, the 15 day of Feb., 1915. Gus L. Corey, County Clerk. By C. K. Maddox, Deputy. (Seal.) (10c revenue stamp.)

QUIT CLAIM DEED. 4318.

This Indenture, made this 17th day of June, A. D. 1913, between B. O. Sims, and Luella Sims, his wife, of the first part, and R. S. Litchfield of the second part.

Witnesseth: That the said party of the first in consideration of the sum of One Dollar and other good and valuable considerations, Dollars to them paid, the receipt whereof is hereby acknowledged, have hereby remised, released, conveyed and quitclaimed, and by these presents do quitclaim unto the said party of the second part, and to his heirs and assigns forever, all their right, title, interest, estate, claim and demand, both at law and in equity, or in and to all the following property, to-wit:

The North Half (N2) of the North Half (N2) of Section Twenty-one (21), Township (17) North, Range Seven (7) East of the Indian Base and Meridian, in Creek County, Oklahoma, (The grantors herein specifically covenants and agrees to and with the grantee herein that no part of the above described land is now or ever has been a part of their homestead.) together with all and singular the hereditaments and appurtenances thereunto belonging.

To Have and to Hold the above described premises unto the said R. S. Litchfield, heirs and assigns; so neither they, the said B. O. Sims, and Luella Sims, his wife, or any person in their name or behalf, shall or will hereafter claim or demand any right or title to the said premises or any part thereof; but they and every one of them shall be excluded and forever barred.

In Witness Whereof, the said party of the first part has

hereunto set their hands and seal the day and year first above written.

Witness:

B. O. Sims,
Luella Sims.

State of Oklahoma, Okfuskee County—ss.

On this 17th day of June, 1913, before me, the undersigned a Notary Public within and for said County and State, personally appears B. O. Sims and Luella Sims, his wife, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed, for the use and purpose therein set forth.

Witness my hand and seal the day and year above set forth. Hilton B Douglass, Notary Public. (Seal.) My Commission expires June 14, 1914.

State of Oklahoma, County of Creek.

This instrument was filed in my office for record on the 18 day of June, A. D. 1913, at 10 o'clock A. M., and duly recorded in Book 91, at page 193. Huber Hughes, Register of Deeds.

Exhibit No. 14.

Certificate of True Copy.

State of Oklahoma, County of Creek—ss.

I, Gus L. Corey, County Clerk of Creek County, State of Oklahoma, do hereby certify that the foregoing is a true copy of Special Warranty Deed from R. S. Litchfield et ux. to W. A. Kunkle, as the same appears on the records of this office. Filed 13 day of May, 1914, at 2 o'clock P. M., and recorded in volume 99, at page 454.

Witness my hand and seal at Sapulpa, Creek County, Oklahoma, this the 15 day of Feb., 1915. Gus L. Corey, County Clerk. By C. K. Maddox, Deputy. (Seal.) (10¢ revenue stamp.)

Special Warranty Deed. No. 10498.

Know All Men By These Presents:

That, R. S. Litchfield and Mary H. Litchfield, his wife, of Independence, Kansas, and Thomas J. Booth and Laura C. Booth, his wife, of Independence, Kansas, and H. G. Cheney and Ella K. Cheney, his wife, of Nowata, Okla., in consideration of the sum of One Dollar, and other good and valuable consideration, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and con-

vey unto W. A. Kunkle, of Bluffton, Indiana, the following described real property and premises, situated in Creek County, State of Oklahoma, to-wit:

North Half (N2) of the Northeast Quarter (NE4) and the North Half (N2) of the Northwest Quarter (NW4) of Section Twenty-one (21), Township Seventeen (17) North, Range Seven (7) East, of the Indian Base and Meridian;

And the South Half (S2) of the Northeast Quarter (NE4) of Section Twenty-one (21) and the West Half (W2) of the Northwest Quarter (NW4) of Section Twenty-two (22), Township Seventeen (17) North, Range Seven (7) East of the Indian Base and Meridian,

together with all improvements thereon and the appurtenances thereto belonging, and warrants the title to the same from and against the lawful claims of all persons claiming by, through or under them.

To have And To Hold the said described premises unto said W. A. Kunkle, his heirs and assigns, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and incumbrances of whatsoever nature

Signed, sealed and delivered this 6th day of May, 1914.

R. S. Litchfield,
Mary H. Litchfield,
Thomas J. Booth,
Laura C. Booth,
H. G. Cheney
Ella K. Cheney.

State of Kansas, County of Montgomery--ss.

Before me, a Notary Public, in and for the County and State aforesaid, on this 6th day of May, 1914, personally appeared R. S. Litchfield and Mary H. Litchfield, his wife, to me known to be the identical persons who executed the within and foregoing instrument, and they acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth

Witness my hand and official seal the day and year last above written. R. J. Reinke, Jr., Notary Public. (Seal.) My Commission expires March 31, 1918.

State of Kansas, County of Montgomery--ss.

Before me, a Notary Public, in and for the County and State aforesaid, on this 6th day of May, 1914, personally appeared Thomas J. Booth and Laura C. Booth, his wife, to

me known to be the identical persons who executed the within and foregoing instrument, and they acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written. R. J. Reinke, Jr., Notary Public. (Seal.) My Commission expires March 31, 1918.

State of Oklahoma, County of Nowata--ss.

Before me, a Notary Public, in and for said County and State, on this 6th day of May, 1914, personally appeared H. G. Cheney and Ella K. Cheney, his wife, to me known to be the identical persons who executed the within and foregoing instrument, and they acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written. J. Wood Glass, Notary Public. (Seal.) My Commission expires Feb. 18th, 1915.

State of Oklahoma, County of Creek.

This instrument was filed in my office for record on the 13 day of May, A. D. 1914, at 2 o'clock P. M., and duly recorded in Book 99, at page 454. Huber Hughes, Recorder of Deeds.

Exhibit No. 15.

Certificate of True Copy.

I, Gus L. Corey, County Clerk of Creek County, State of Oklahoma, do hereby certify that the foregoing is a true copy of General Warranty Deed from R. S. Litchfield and Mary H. Litchfield, et al. to W. A. Kunkle, as the same appears on the records of this office. Filed 22 day of Jan. 1915, at 8 o'clock A. M., and rerecorded in volume 106, at page 103.

Witness my hand and seal at Sapulpa, Creek County, Oklahoma, this 15 day of Feb., 1915. Gus L. Corey, County Clerk. By Deputy. (Seal.) (10c revenue stamp.)

GENERAL WARRANTY DEED. No. 14933.

Know All Men By These Presents:

That, R. S. Litchfield and Mary H. Litchfield, his wife, of Independence, Kansas, and Thomas J. Booth and Laura C. Booth, his wife, of Independence, Kansas, and H. G. Cheney and Ella K. Cheney, his wife, of Nowata, Oklahoma, in consideration of the sum of One Dollar, and other good and val-

uable considerations, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto W. A. Kunkel, of Bluffton, Indiana, the following described real property and premises, situated in Creek County, State of Oklahoma, to-wit:

The North Half of the Northeast Quarter (N2 of NE4) and the North Half of the Northwest Quarter (N2 of NW4) of Section 21, Township 17 N., Range 7 E., and The South Half of the Northeast Quarter (S2 of NE4) of Section 21, and the West Half of the Northwest Quarter of Section 22, all in Township 17 N., Range 7 E., and containing 320 acres in all.

together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To Have and To Hold said described premises unto the said W. A. Kunkel, his heirs and assigns forever, free, clear and discharged of and from all former grants, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature.

Signed and delivered this 12th day of May, 1914.

R. S. Litchfield,
Mary H. Litchfield,
Thomas J. Booth,
Laura C. Booth,
H. G. Cheney.
Ella K. Cheney.

State of Kansas, County of Montgomery—ss.

On this 12th day of May, 1914, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared R. S. Litchfield and Mary H. Litchfield, his wife, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal. R. J. Reinke, Jr., Notary Public. (Seal.) My Commission expires March 31, 1918.

State of Kansas, County of Montgomery—ss.

On this 12th day of May, 1914, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared Thomas J. Booth and Laura C. Booth, his wife, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me

that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal. R. J. Reinke, Jr., Notary Public. (Seal.) My Commission expires March 31, 1918.

State of Oklahoma, County of Nowata—ss.

On this 13th day of May, 1914, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared H. G. Cheney and Ella K. Cheney, his wife, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal. J. Wood Glass, Notary Public. (Seal.) My Commission expires Feb. 18, 1915.

State of Oklahoma, County of Creek.

This instrument was filed in my office for record on Jan 22, 1915, at 8 o'clock A. M., and duly recorded in Book 106, at page 103. Gus L. Corey, County Clerk. By C. K. Maddox, Deputy. (Seal.)

Exhibit No. 16.

Certificate of True Copy.

State of Oklahoma, County of Creek—ss.

I, Gus L. Corey, County Clerk of Creek County, State of Oklahoma, do hereby certify that the foregoing is a true copy of Oil & Gas Lease No. 10499, as the same appears on the records of this office. Filed 13 day of May, 1914, at 3 o'clock P. M., and recorded in volume 90, at page 355.

Witness my hand and seal at Sapulpa, Creek County, Oklahoma, this, the 15 day of Feb., 1915. Gus L. Corey, County Clerk. By C. K. Maddox, Deputy. (Seal.) (10c revenue stamp.)

OIL AND GAS LEASE. No. 10499.

Agreement made and entered into the 12th day of May, A. D. 1914, by and between W. A. Kunkel, of Bluffton, Indiana, party of the first part, lessors, and The Prairie Oil & Gas Company, a Kansas Corporation, party of the second part, lessees.

Witnesseth, That the said party of the first part, for and in consideration of the sum of One Dollar to him in hand well and truly paid by the said party of the second part, the

receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of the party of the second part, to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said second party, its successors or assigns, for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, and of building tanks, powers, stations and structures thereon to produce and take care of said products, all that certain tract of land situate in the County of Creek, State of Oklahoma, described as follows, to-wit:

The North Half of the Northeast Quarter (N2 of NE4) and the North Half of the Northwest Quarter (N2 of NW4) of Section 21; and the South Half of the Northeast Quarter (S2 of NE4) of Section 21, and the West Half of the Northwest Quarter of Section 22, Township 17 N., Range 7 E., and containing 320 acres, more or less.

It is agreed that this lease shall remain in force for a term of five years from this date and as long thereafter as oil or gas, or either of them, is produced from said land by the party of the second part, its successors or assigns.

In consideration of the premises the said party of the second part covenants and agrees:

1. To deliver to the credit of the first party, his heirs or assigns, free of cost, in the pipe line to which it may connect its wells, the equal one-eighth part of all oil produced and saved from the leased premises.

2nd. To pay the first party Two Hundred Fifty Dollars each year in advance, for the gas from each well where gas only is found, while the same is being used off the premises, and the first party to have gas free of cost from any such well for 2 stoves and 4 inside lights in the principal dwelling house on said land during the same time by making his own connections with the well.

3rd. To pay the first party for gas produced from any oil well and used off the premises at the rate of 1/8 of the gross proceeds for the time during which such gas shall be used, said payments to be made each three months in advance.

The party of the second part shall have the right to use, free of cost, gas, oil and water produced on said land for its operations, except water from wells of first party.

When requested by first party, the second party shall bury its pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn on said premises.

Second party shall pay for damages caused by it to growing crops on said land.

The party of the second part shall have the right at any time to remove all machinery and fixtures on said premises, including the right to draw and remove casing.

The party of the second part shall not be bound by any change in the ownership of said land until duly notified of any such change, either by notice in writing duly signed by the parties to the instrument of conveyance or by receipt of the original instrument of conveyance, or a duly certified copy thereof.

All payments which may fall due under this lease may be made directly to or deposited by to h..... credit in

The party of the second part, its successors or assigns, shall have the right at any time, on the payment of One and no/100 Dollars to the party of the first part, his heirs or assigns, to surrender this lease for cancellation, after which all payments and liabilities thereafter to accrue under and by virtue of its terms shall cease and determine; provided this surrender clause and the option therein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law or equity by the lessee to enforce this lease, or any of its terms, or to receive possession of the leased land, or any part thereof, against or from the lessor, his heirs, executors, administrators, successors or assigns, or any other person or persons. All covenants and agreements herein set forth between the parties hereto shall extend to their successors, executors, administrators and assigns.

Witness the following signatures and seals:

W. A. Kunkel, (Seal)

The Prairie Oil &
Gas Company, (Seal)

By N. K. Moody, (Seal)

Vice President.

Witness:

.....
.....

Acknowledgment to the Assignment.

State of Kansas, County of Montgomery—ss.

On this the 12th day of May, A. D. 1914, before me, the undersigned, Notary Public in and for the County and State aforesaid, personally appeared W. A. Kunkel, to me known to be the identical person who executed the within and fore-

going instrument, and acknowledged to me that he executed the same as free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal. W. H. Love, Notary Public. (Seal.) My Commission expires July 23, 1917.

State of Oklahoma, Creek County---ss.

This instrument was filed in my office for record on the 13 day of May, A. D. 1914, at 3 o'clock P. M., and duly recorded in Book 90, on page 355. Huber Hughes, Register of Deeds. By. Deputy.

Exhibit No. 17.

QUARTER ANNUAL STATEMENT

Of The Prairie Oil & Gas Co. to the State Auditor of the State of Oklahoma as required by law, of the name, number and location of each and all of the mines and oil and gas wells operated by said person, firm, association or corporation in the State of Oklahoma during the quarter annual period beginning April 1, 1914, and ending June 30, 1914, both dates included; the kind of mineral, oil or gas; the gross amount thereof produced from all of said mines and wells; the amount of royalty, if any, for the benefit of the Indian Citizen, Tribe or Landlord, and the actual cash value of such gross production less the royalty paid by such person, firm or corporation.

Name or Number of Mine, or Oil or Gas Well: 2.

Location: NE⁴ of Sec. 21 and NW⁴ of Sec. 22, Twp. 17, R. 7, Creek County.

Gross Amt. Produced: 38,258.74 bbls.

Gross Amt. Produced, Less Royalty: 33,476.40 bbls.

Actual Cash Value: \$25,107.30.

Pereent of Royalty: 1/8.

Amount of Royalty: 4,782.34 bbls.

Name and P. O. Address of Indian Citizen, Tribe or Landlord: Litchfield, et al.

This is to certify that the above is a true and correct copy of production as reported by the Prairie Oil & Gas Company for taxation, filed with the State Auditor for above period. Witness by hand and official seal this 20th day of March, 1915.

E. B. Howard, State Auditor.

(On back:)

I, the undersigned, upon oath do depose and say that I am the Assistant Treasurer of the within named The Prairie Oil and Gas Company. That I have read the foregoing and

within statement and schedule; that I am fully informed of the statements therein contained, and that the same are to my knowledge true and correct, so help me God.

R. G. Hare.

State of Kansas, Montgomery County, ss:

Be It Remembered, That on this 30th day of July, 1914, before me, the undersigned, a Notary Public, in and for above named State and County, personally appeared....., to me known, and being duly sworn, stated that he had read the within and foregoing schedule and statement and has full knowledge of the contents therein contained, and in my presence subscribed his name thereto.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal at Independence, Kansas, on the day and date last written.

(Seal)

Fred M. Wilhelm,

My commission expires Oct. 7, 1916. Notary Public.

INSTRUCTIONS.

This statement must be filled out and filed with the State Auditor on or before the last day of July, October, January and April, respectively, of each year, and must cover the quarter annual period ending on the last day of June, September, December and March, respectively, of each year.

In preparing these statements, it is essential that all the information required on the blank be given. The proper officer must execute the affidavit as prescribed before some person authorized to administer oaths.

The actual producer of minerals, oil, or natural gas is required to report the entire gross production, including any royalties or the interest that any other person may have in same.

The Gross Revenue Tax is to be computed at one-half of one per centum ($1/2$ of 1%) on the actual cash value of the entire gross production; Provided, that where any portion of the gross production is royalty required to be paid for the benefit of the Indian Citizen, Indian Tribe or Landlord, the amount of such royalty shall be set out specifically, as indicated in this blank in the column for that purpose, and the tax computed on the actual cash value of the gross production less the royalty so specified.

At the time of the filing sworn statement with the State Auditor, the gross revenue tax shall be paid to the State Treasurer. Penalty on delinquent tax, 18% per annum from date of delinquency until date the tax is paid to State Treasurer.

Blanks for making the above required statements may be had by applying to the State Auditor, Oklahoma City, Oklahoma.

E. B. Howard, State Auditor.

(Endorsed) Filed Aug. 10, 1914. J. C. McClelland, State Auditor.

Exhibit No. 18.

QUARTER ANNUAL STATEMENT

Of The Prairie Oil & Gas Co. to the State Auditor of the State of Oklahoma as required by law, of the name, number and location of each and all of the mines and oil and gas wells operated by said person, firm, association or corporation in the State of Oklahoma during the quarter annual period beginning July 1st, 1914, and ending Sept. 30th, 1914, both dates included; the kind of mineral, oil or gas; the gross amount thereof produced from all of said mines and wells; the amount of royalty, if any, for the benefit of the Indian Citizen, Tribe or Landlord, and the actual cash value of such gross production less the royalty paid by such person, firm or corporation.

Name or Number of Mine, or Oil or Gas Well: 2.

Location: NE4 of Sec. 21 and NW4 of Sec. 22, Twp. 17,
R. 7, Creek County.

Gross Amt. Produced: 106,028.52 bbls.

Gross Amt. Produced, Less Royalty: 92,774.96 bbls.

Actual Cash Value: \$67,279.94.

Percent of Royalty: 1/8.

Amount of Royalty: 13,253.56 bbls.

Name and P. O. Address of Indian Citizen, Tribe or
Landlord: R. S. Litchfield.

This is to certify that the above is a true and correct copy of production as reported by the Prairie Oil & Gas Company for taxation, filed with the State Auditor for above period. Witness by hand and official seal this 20th day of March, 1915.

E. B. Howard, State Auditor.

(On back:)

I, the undersigned, upon oath do depose and say that I am the Vice President of the within named The Prairie Oil and Gas Company. That I have read the foregoing and within statement and schedule; that I am fully informed of the statements therein contained, and that the same are to my knowledge true and correct, so help me God.

W. F. Gates.

State of Kansas, Montgomery County, ss:

Be It Remembered, That on this 30th day of October, 1914,

before me, the undersigned, a Notary Public, in and for above named State and County, personally appeared W. F. Gates, to me known, and being duly sworn, stated that he had read the within and foregoing schedule and statement and has full knowledge of the contents therein contained, and in my presence subscribed his name thereto.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal at Independence, Kas., on the day and date last written.

(Seal)

Fred M. Wilhelm,

My commission expires Oct. 7, 1916. Notary Public.

INSTRUCTIONS.

This statement must be filled out and filed with the State Auditor on or before the last day of July, October, January and April, respectively, of each year, and must cover the quarter annual period ending on the last day of June, September, December and March, respectively, of each year.

In preparing these statements, it is essential that all the information required on the blank be given. The proper officer must execute the affidavit as prescribed before some person authorized to administer oaths.

The actual producer of minerals, oil, or natural gas is required to report the entire gross production, including any royalties or the interest that any other person may have in same.

The Gross Revenue Tax is to be computed at one-half of one per centum ($1/2$ of 1%) on the actual cash value of the entire gross production; Provided, that where any portion of the gross production is royalty required to be paid for the benefit of the Indian Citizen, Indian Tribe or Landlord, the amount of such royalty shall be set out specifically, as indicated in this blank in the column for that purpose, and the tax computed on the actual cash value of the gross production less the royalty so specified.

At the time of the filing sworn statement with the State Auditor, the gross revenue tax shall be paid to the State Treasurer. Penalty on delinquent tax, 18% per annum from date of delinquency until date the tax is paid to State Treasurer.

Blanks for making the above required statements may be had by applying to the State Auditor, Oklahoma City, Oklahoma.

E. B. Howard, State Auditor.

(Endorsed) Filed Nov. 5, 1914. J. C. McClelland, State Auditor.

Exhibit No. 19.

QUARTER ANNUAL STATEMENT

Of The Prairie Oil & Gas Co. to the State Auditor of the State of Oklahoma as required by law, of the name, number and location of each and all of the mines and oil and gas wells operated by said person, firm, association or corporation in the State of Oklahoma during the quarter annual period beginning Oct. 1st, 1914, and ending Dec. 31st, 1914, both dates included; the kind of mineral, oil or gas; the gross amount thereof produced from all of said mines and wells; the amount of royalty, if any, for the benefit of the Indian Citizen, Tribe or Landlord, and the actual cash value of such gross production less the royalty paid by such person, firm or corporation.

Name or Number of Mine, or Oil or Gas Well: —

Location: NE4 of Sec. 21 and NW4 of Sec. 22, Twp. 17,
R. 7, Creek County.

Gross Amt. Produced: 454,841.07 bbls.

Gross Amt. Produced, Less Royalty: 397,985.94 bbls.

Actual Cash Value: \$218,892.26.

Percent of Royalty: 1/8.

Amount of Royalty: 56,855.13 bbls.

Name and P. O. Address of Indian Citizen, Tribe or
Landlord: R. S. Litchfield, et al.

This is to certify that the above is a true and correct copy of production as reported by the Prairie Oil & Gas Company for taxation, filed with the State Auditor for above period. Witness by hand and official seal this 20th day of March, 1915.

E. B. Howard, State Auditor.

(On back:)

I, the undersigned, upon oath do depose and say that I am the Vice President of the within named The Prairie Oil and Gas Company. That I have read the foregoing and within statement and schedule; that I am fully informed of the statements therein contained, and that the same are to my knowledge true and correct, so help me God.

N. K. Moody.

State of Kansas, Montgomery County, ss:

Be It Remembered, That on this 30th day of January, 1915, before me, the undersigned, a Notary Public, in and for above named State and County, personally appeared N. K. Moody, to me known, and being duly sworn, stated that he had read the within and foregoing schedule and statement and has full knowledge of the contents therein contained, and in my presence subscribed his name thereto.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal at Independence, Kas., on the day and date last written.

(Seal)

My commission expires Feb. 23, 1918. Notary Public.

INSTRUCTIONS.

This statement must be filled out and filed with the State Auditor on or before the last day of July, October, January and April, respectively, of each year, and must cover the quarter annual period ending on the last day of June, September, December and March, respectively, of each year.

In preparing these statements, it is essential that all the information required on the blank be given. The proper officer must execute the affidavit as prescribed before some person authorized to administer oaths.

The actual producer of minerals, oil, or natural gas is required to report the entire gross production, including any royalties or the interest that any other person may have in same.

The Gross Revenue Tax is to be computed at one-half of one per centum ($1/2$ of 1%) on the actual cash value of the entire gross production; Provided, that where any portion of the gross production is royalty required to be paid for the benefit of the Indian Citizen, Indian Tribe or Landlord, the amount of such royalty shall be set out specifically, as indicated in this blank in the column for that purpose, and the tax computed on the actual cash value of the gross production less the royalty so specified.

At the time of the filing sworn statement with the State Auditor, the gross revenue tax shall be paid to the State Treasurer. Penalty on delinquent tax, 18% per annum from date of delinquency until date the tax is paid to State Treasurer.

Blanks for making the above required statements may be had by applying to the State Auditor, Oklahoma City, Oklahoma.

E. B. Howard, State Auditor.

(Endorsed) Filed Feb. 3, 1915. E. B. Howard, State Auditor.

AMENDED ANSWER AND CROSS-COMPLAINT OF
HANNAH CANARD BARNETT AND TUCKER K.
BARNETT TO THE BILL AND AMENDED BILL OF
COMPLAINT AND TO ANSWER OF PARIRIE OIL
AND GAS COMPANY.

Come now the defendants Hannah Canard Barnett and Tucker K. Barnett, and reserving to themselves all manner

exceptions and objections to the uncertainties and imperfections of the original and amended bills in said cause, and in answer thereto or to so much thereof as they are advised it is material to be answered, say:

First: That they admit that they are citizens of said State of Oklahoma; that they reside in said Eastern District of said state; that the lands and matters involved and described in said bill and amended bill are of the value of more than three thousand dollars exclusive of interest and costs; and that said lands are situated in Creek County, State of Oklahoma; that the said Mehaley Watson, mentioned in said bill and amended bill, was duly enrolled upon the approved rolls of Creek tribe of Indians as eleven-sixteenth Indian blood opposite roll Number M. C. 143; that said lands were set apart as the allotment of said Mehaley Watson out of the domain of said Creek Nation, for which patents were issued dated the 10th day of March, 1909, and were approved by the Secretary of the Interior on the 24th day of March, 1909 and were duly recorded in the office of the Commission to the Five Civilized Tribes on the 27th day of March, 1909; that said Mehaley Watson died in 1908, intestate, and without issue and unmarried; that said Watson was an illegitimate child of said Hannah Canard Barnett; that said Hannah Canard Barnett survived said Mehaley Watson and inherited the entire fee simple title to said lands from said Mehaley Watson; that said Hannah Canard Barnett is a duly enrolled member of said Creek Nation, and is so enrolled as a fullblood Creek Indian opposite roll Number 4574 of said rolls.

Further answering defendants say: That on the 22nd day of March, 1909, the defendant Hannah Canard Barnett purports to have signed an instrument purporting to be a Warranty Deed, which purported to convey to B. O. Sims the lands described in plaintiff's petition for a purported consideration of Five Hundred (\$500.00) Dollars, and they admit that on the said 22nd day of March, 1909, the County Court of Hughes County made an order purporting to approve said deed.

Further answering defendants say that they are without any personal knowledge concerning any of the other deeds and instruments referred to in plaintiff's amended bill of complaint, and therefore deny that said instruments, or any of them were made, executed, or delivered as alleged in said amended bill and demand strict proof of the execution and delivery thereof.

Further answering defendants deny that the plaintiff W. A. Kunkle is the owner of said lands, or any part thereof, in fee simple or by any other right, title or interest whatever.

Further answering defendants say that Mehaley Watson the allottee of said land, was a resident of Hughes County, at the time of her death, but allege that she died in the month of November, 1908, a resident of Okfuskee County in the State of Oklahoma.

Further answering defendants say that it is not true that on the 17th day of June, 1913, or at any other time, the County Court of Okfuskee County made an order approving the said purported deed from Hannah Canard to B. O. Sims, dated March 22nd, 1909.

Further answering defendants deny that they have made or entered into certain leases, contracts or conveyances to and among one another except their contract of employing their counsel herein which is upon a contingent fee and depends upon their recovery in said matters, and which was entered into by them before this suit was ever brought; defendants further deny that they will enter into other deeds, contracts or conveyances the effect of which will cloud the title of complainant with respect to said lands or that the title to said lands will thereby be further clouded, etc., as claimed in said bill of complaint; but alleged said complainant has no title or right in or to said lands or any part thereof to cloud or against which defendants could claim said lands adversely to him or to said Prairie Oil & Gas Company, but say they are the owners in fee simple of said lands and every part thereof and to all the rentals and issues arising therefrom since the 6th day of May, 1914, together with the oil and gas taken therefrom since that date.

CROSS COMPLAINT. ,

Further answering, and by way of cross-complaint to the amended bill of complaint filed by the plaintiff herein, the defendants state:

I.

That they, the said Hannah Canard Barnett and Tucker K. Barnett, are now husband and wife. That they are members of the Creek Tribe or Nation of Indians, and that the said Tucker K. Barnett is enrolled opposite roll Number 4979 and the said Hannah Canard Barnett is enrolled opposite roll Number 4574 under and by the name of Hannah Canard, and that they are both enrolled as full blood Creek Indians and that they are both in fact full blood Creek Indians. They allege that they were born and reared in the Creek Nation among full blood Indians and according to the customs of said Creek Tribe of Indians, they and each of them are wholly uneducat-

ed and unaccustomed to the usages of English speaking people, and that the said Hannah Canard Barnett can only read, write and understand a few words of English; and that she is incapable of carrying on or understanding a conversation with the English language. That she is wholly without business experience and entirely unacquainted with the true value and use of property, and especially of lands, and that she at the time of the transactions hereinafter referred to, had never had any experience whatever in business matters and that she was and is entirely incapable of managing any business transaction involving valuable property. That at the time of said transaction she was tractable and easily controlled, persuaded and influenced and that she was easily imposed upon and could be easily induced to sign papers which she had not and could not read or understand. And these defendants allege that she could not know or understand the contents or meaning of written instruments at the time of the transactions hereinafter referred to and that she cannot now read any contract, deed, or other instrument effecting her legal rights or ownership of property.

II.

Defendants allege that in February, 1906, the defendant, Hannah Canard Barnett, then Hannah Canard, gave birth to Mehaley Watson. That said Mehaley Watson was illegitimate and that said child died in November, 1908, intestate, unmarried and without issue. That said Mehaley Watson lived with and was cared for by her said mother, the defendant, Hannah Canard Barnett, during her life time and was residing with her said mother at the time of her death, and that the legal domicile and actual residence of the said Mehaley Watson, as well as the defendant, Hannah Canard Barnett, was at the time of the death of the said Mehaley Watson, in Okfuskee County, in the State of Oklahoma. That upon the death of the said Mehaley Watson the said defendant, Hannah Canard Barnett, became and was her sole heir at law and inherited all property of which she was the owner at the time of her death or became entitled to thereafter. That under the Act of Congress entitled "An Act to Provide for the Final Disposition of Affairs of the Five Civilized Tribes in the Indian Territory and for other Purposes," approved April 26th, 1906, the said Mehaley Watson became entitled to enrollment as a member of said Creek Tribe of Indians and to an allotment out of the domain of the said Creek Nation, and that the name of the said Mehaley Watson was duly enrolled upon the approved rolls of said Creek Nation opposite Minor Roll Number 143, and that her said enrollment was duly approved by the Secretary of the Interior. That thereafter the lands

described in the amended bill of complaint were patented to and in the name of the said Mehaley Watson. That the said patents were dated the 10th day of March, 1909, and were duly approved by the Secretary of the Interior on the 24th day of March, 1909, and were recorded in the office of the Commission to the Five Civilized Tribes on the 27th day of March, 1909. That under and by virtue of Section Five (5) of the Act of April 26th, 1906, when the patents were recorded, the legal title to said lands became vested in the said Hannah Canard Barnett and that the legal title did not vest until said patents were so recorded. That when said patents were recorded they were delivered to the said Hannah Canard Barnett and that she thereupon became seized and possessed of said lands in fee simple.

III.

That Hully Canard¹ was likewise a member of said tribe and received an allotment out of the domain of the Creek Nation, and died long prior to the death of said child, Mehaley Watson, intestate and left him surviving said defendant, Hannah Canard Barnett, his daughter, and Sallie Canard, his wife; that after the death of said child, one B. O. Sims came to said defendant and her said mother, Sallie Canard, and sought to purchase said allotment of said Hully Canard, whereupon said defendant and her mother agreed to sell the same to him, and were by said Sims induced to go to the town of Holdenville, Oklahoma, to make and execute a deed therefor to him, and to have the same approved by the county court of said Hughes County, Oklahoma; that on the 22nd day of March, 1909, said defendant and her said mother did go to said town and executed a deed to said Sims for said Hully Canard allotment and said county court of said Hughes County undertook to approve the same on said date; that it now appears that another instrument in writing for said allotment of said Mehaley Watson appears of record in the office of the register of deeds of said Creek County, Oklahoma, in Book 31, at page 104, and therein filed of record on March 26, 1909, and purports to be a warranty deed to said Sims for said allotment of said Mehaley Watson, dated the 22nd day of March, 1909, and purporting to have been signed and acknowledged by said defendant, Hannah Canard Barnett, in the name of Hannah Canard, and is the same deed mentioned and referred and relied upon by complainant in his bill and amended bill filed in this cause; that said deed purports to have been executed for a consideration of five hundred dollars recited upon the face thereof, but said defendant, Hannah Canard, never received said consideration for said lands therein described, or any part thereof, and now has no recollection whatever of ever

having made or executed said deed, although not being able to read or understand the English language, she may have signed the same without knowing its nature or character or that it was a deed to said Sims for said allotment of said Mehaley; that it was not the intention or purpose of said defendant to sell or convey said allotment to said Sims on said date in said town or to make and execute him a deed therefor, but to make and execute to him a deed for said allotment of said Hully Canard only, and at said time and place; that said defendant did not discover that said deed was thus of record for a long time after the same purports to have been thus made and executed, and then employed counsel to recover the same, as hereinafter set forth; that often both before and after the date of said deed, said defendant was solicited to sell and convey said allotment but as often refused to do so, as she desired and intended to keep said allotment as it was the lands of her deceased child; and defendants allege that if her name was signed to said deed, she was induced to so sign the same without knowing it was a deed to said Sims for said allotment, and would not have signed the same had she known it was a deed for said lands but would have refused to sell or convey said lands to said Sims or to any other person; that said deed now purports to have been approved by the County Court of said Hughes County on said date, to-wit, the 22nd day of March, 1909, but said defendant has no recollection of any such proceedings; and never intended to have said deed so approved before said County Court of Hughes County or before any other county court of said state or otherwise; that said deed also purports to have been acknowledged before one C. W. Miller, a notary public of said Hughes County, but defendants allege that said Miller was then and long prior thereto and long thereafter, the counsel and attorney of said Sims, and as counsel and attorney for said Sims drew up said deed for said Hully allotment and also said deed to said Mehaley allotment and was then acting as counsel for said Sims in the procurement of said deeds and in obtaining their approval before said county court of said Hughes County; that said Miller can neither speak or understand the Creek Indian language, and said defendant, Hannah Canard Barnett, cannot, and never could, speak or understand the English language; and, therefore, she never acknowledged said deed for said Mehaley allotment before said Miller as such notary public, and for said reason said Miller was not legally competent or capable of taking the acknowledgment to said deed of said defendant, and such acknowledgment is therefore null and void, and said alleged deed was not entitled to recordation because not acknowledged according to law in such matters.

IV.

Defendants allege that the said County Court of Hughes County had no jurisdiction of the settlement of the estate of said Mehaley Watson and had no power, authority or jurisdiction to approve the said purported deed of March 22nd, 1909, to said Sims for the allotment of said Mehaley Watson, and that the purported approval thereof by the County Court of Hughes County, and all of the proceedings therein, are nullities and not susceptible of ratification or waiver, and that said purported approval was void and illegal for the reason that said County Court had no jurisdiction of the estate of the said Mehaley Watson and also for the reason that the purported approval was had on the 22nd day of March 1909, and five (5) days before the legal title to said lands had vested in Hannah Canard, while the title thereto was still in the Creek Nation and under the control of the Federal Government; and defendants say that said purported deed and its purported approval were and are absolutely null and void because taken and approved in violation of Section Five (5) of the Act of April 26th, 1906, and of Sections Five (5) and Nine (9) of the Act of May 27th, 1908, entitled "An Act for the Removal of Restriction from part of the lands of allottees of the Five Civilized Tribes, and for other purposes."

V.

These defendants further allege that after they discovered that said Sims had what purported to be a deed to the allotment of the said Mehaley Watson and had placed the same of record, they employed George C. Crump, practicing attorney at Holdenville, Oklahoma, to bring suit to recover said allotment, and on the 27th day of March, 1913, made and entered into a written contract of employment with the said Crump, a copy of which is attached hereto, marked Exhibit "2" and made a part hereof. That on the same date, to-wit, March 27th, 1913, these defendants, in consideration of the services to be performed by said Crump, as attorney, in recovering said lands, and in further consideration of Two Hundred Fifty (\$250.00) Dollars paid in hand, and Nine Hundred (\$900.00) Dollars to be paid by him on the recovery of said lands, made and executed to said Crump an oil and gas lease upon a portion of said allotment, to-wit:

The Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) and the Northeast Quarter (NE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-one (21) Township Seventeen (17) North, Range Seven (7) East containing Eighty (80) acres.

a copy of said lease is attached to the original answer and cross-complaint of the defendants herein as Exhibit "1," and is here referred to and made a part of this cross-petition.

They allege that, acting under said contract, the said George C. Crump did institute a suit to recover said lands, against B. O. Sims and R. S. Litchfield, and others, in the District Court of Creek County, Oklahoma. A copy of the petition filed in said action is attached to the original answer and cross-complaint in this action as Exhibit Number "2" and is here referred to and made a part hereof, and a copy of said written contract was made a part of said petition as Exhibit "A," and appears in said Exhibit Number "2" to the original answer and cross-complaint herein. That on the 2nd day of May, 1913, said B. O. Sims filed his disclaimer in said action disclaiming any title or interest in the lands described in the petition, a copy of which disclaimer is attached to the original answer and cross-complaint herein as Exhibit Number "3" and is here referred to and made a part hereof. That on the 26th day of May, 1913, said Crump undertook to sell the said R. S. Litchfield his interest in said oil and gas lease and on said date entered into a written contract with the said Litchfield to sell the same, but these defendants allege that the said contract contained the following provisions: "Subject, however, to the limitations, restrictions and liabilities therein imposed insofar as the same effects the

Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) and the Northeast Quarter (NE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of said Section Twenty-one (21), Township Seventeen (17) North, Range Seven (7) East of the Indian Base and Meridian.

A certified copy of said contract is attached to the original answer and cross-complaint herein as Exhibit Number "4" and is here referred to and made a part of this cross-petition.

That on the said 26th day of May, 1913, the said Crump also undertook to make, and did make and execute to said Litchfield an instrument purporting to be a Quitclaim Deed for said oil and gas lease, and the same was filed for record in said Register of Deed's office of said Creek County and recorded therein in Book 85, at page 459. A copy of said purported Quitclaim deed is filed in said original answer and cross-complaint marked Exhibit "5" and it is here referred to and made a part of this amended answer and cross-complaint.

VI.

That the answering defendants further allege that after said suit or action was brought in said District Court, said

Litchfield or some of the defendants therein undertook to remove said cause into the United States District Court for the Eastern District of Oklahoma; and on the day of June, 1913, said Crump as counsel for said plaintiff therein, entered into a stipulation with said Litchfield or said defendants therein through their counsel in said cause whereby it was stipulated that a decree should be entered in said court dismissing her petition with prejudice, and quieting the title to said lands in said R. S. Litchfield, etc., as shown by a duly certified copy of said stipulation filed with said original answer and cross-complaint of these defendants as exhibit No. "6" and the same is asked to be read and considered herewith as part hereof; that said stipulation was filed in said United States District Court on the 3rd day of July, 1913, in said cause, and on said date, a decree thereon and in said cause was entered by said court, and attempted to so quiet the title to said lands in said Litchfield, as shown by a duly certified copy of said decree filed with said original answer, as Exhibit No. "8" and the same is asked to be read and considered herewith as part hereof; that on the 23rd day of June, 1913, said Crump and counsel for said Litchfield entered into a similar stipulation in said cause to be filed therein in the said District Court of said Creek County, a duly certified copy of which is filed with said original answer and cross-complaint as Exhibit Number "7," and the same is asked to be read and considered herewith as a part hereof; that in pursuance of said stipulation, a decree was entered in said District Court of said Creek County, on the 11th day of July, 1913, on practically the same terms, provisions and conditions set forth in said other decree, a certified copy of which is filed with said original answer and cross-complaint as Exhibit No. "9," and the same is hereby asked to be read and considered herewith as a part hereof; that on the 6th day of May, 1914, said R. S. Litchfield and wife, Thomas J. Booth and wife, and H. G. Cheney and wife undertook to make and execute to said complainant, W. A. Kunkle, a special warranty deed for said lands and other lands therein described, and the same was admitted to record in said office of said Register of Deeds of said Creek County, on the 13th day of May, 1914, and therein recorded in Book 99, at page 454, a duly certified copy of which is filed with said original answer and cross-complaint of these defendants as Exhibit Number "14," and the same is asked to be read and considered herewith; and on the 12th day of May, 1914, said same grantors undertook to make said Kunkle a warranty deed for the same lands, and the same was filed of record in said office, on the 22nd day of January, 1915, and recorded therein in Book 106, at page

103, a duly certified copy of which is filed with said original answer and cross-complaint as Exhibit Number "15" and the same is asked to be read and considered herewith as part hereof; and that on the 12th day of May, 1914, said Kunkle undertook to make said Prairie Oil & Gas Company said oil and gas lease herein and in the bill and amended bill of complaint mentioned, and the same was filed of record in said office on the 13th day of May, 1914, and was recorded therein in Book or Volume 90, at page 355, a duly certified copy of which is filed with said original answer and cross-complaint as Exhibit No. "16," and the same is hereby asked to be read and considered herewith as part hereof; and that before said Company would take or accept said oil and gas lease, as aforesaid, said company demanded of said Kunkle an indemnifying bond to indemnify it against all said claims and demands of these defendants in and to said lands, and said Kunkle gave said bond and so indemnified said company, and thereby said company had full knowledge and notice of all such rights, claims and demands of these answering defendants, and especially said Hannah Canard Barnett in and to said lands as herein claimed, before it took said lease and took the same with full and complete knowledge thereof; and before taking said special warranty deed from said Litchfield, Booth and Henry on the 6th day of May, 1914, said Kunkel also had full knowledge and notice of all such claims and demands of these answering defendants to said lands, and after taking said deed, said Kunkel exacted of said grantors said warranty deed in order to save himself from their said claims, under the warranty thereof.

VII.

That in said contract of employment of said Crump, it is among other things specially stipulated and agreed that "no settlement, adjournment, dismissal or compromise of any kind of said suit shall be made by or be binding upon either of the parties hereto, or entered in any court, except with the express approval of the County Court of Okfuskee County, Oklahoma, and this clause is a material part of the consideration of this contract;" that "a copy of this contract shall be filed with the court in which the suit thereinbefore referred to is filed;" that the terms, conditions, stipulations and agreements, embodied in this contract and agreement shall extend to and be binding upon the heirs, executors, administrators and assigns, of all the parties hereto, equally as upon the parties themselves;" and by the terms of said oil and gas lease with said Crump it is among other things further stipulated and agreed that "the further consideration above mentioned are the employment and services of said

George C. Crump, as per the terms and conditions of the written contract of said parties hereto of this date referred to, which contract is herewith made a part hereof;" and that "there shall be no assignment of this contract or any right thereunder until the title to the allotment of Mehaley Watson, deceased, shall have been quieted as per the terms and conditions of the written contract hereinbefore referred to;" and that it is further provided in said contract that such suit should be at the cost and expense of said Crump and to the exemption of said defendants; and these answering defendants all-ge that said County Court of said Okfuskee County never approved said contract of said Crump with said Litchfield or said quitclaim deed so made by said Crump to said Litchfield or either of said stipulations for the settlement of said suit or said decree aforementioned; that said contract with Litchfield, said stipulations and decrees were each made, taken and entered in open violation of said contract so made by said Crump with these defendants and said ninety-nine-year oil and gas lease so made by them, as aforesaid, and without the knowledge, consent or agreement of these answering defendants or either of them, and against their will, wish and desire, and contrary to said contract and provisions of said lease; and these defendants had no knowledge, notice or information of such matters or that the same had been made or said decree so entered, until shortly before this suit was brought in this honorable court; that notwithstanding the terms and provisions of said contract with said Crump, said Litchfield after so obtaining the same and said quitclaim deed, failed, neglected and refused to prosecute said action but afterwards entered into said stipulations and had said decrees so entered in said respective courts thus attempting to quiet the title to said lands in himself instead of in said Hannah Canard Barnett, to all of which said Crump likewise assented and participated, as shown by said contract, stipulations and decrees; that these answering defendants are informed and believe and upon that information and belief charge that for executing said contract to said Litchfield and making him said quitclaim deed, said Crump was paid and received from said Litchfield at least the sum of Five Thousand Dollars, without the knowledge, consent or agreements of these defendants or either of them, and contrary to the terms, provisions and conditions of said contract of employment and lease so made by and between them on the 27th day of March, 1913; that defendants did not learn that said Crump had thus received said sum of money therefor until shortly before this suit was brought, and no part thereof was given to or received by these defendants and they were never

informed of such matters by said Crump at any time even to the present time; but at all times heretofore, said Crump concealed from them the fact that he had received anything thereon and that he had sold out to said Litchfield, entered into said stipulations and had said decrees so entered, and that the same had been so entered; and defendants further charge that said contract and quitclaim deed of said Crump to and with said Litchfield, said stipulations and decrees, are all not only without authority from these defendants but are contrary to the express provisions and conditions of said contract of employment and lease made with said Crump, and were known by said Litchfield to be without authority and contrary to the terms and provisions thereof at the time he so entered into them and each of them, and before said decrees were so entered; that the same and each of them are likewise contrary to, and in violation of, said respective acts of Congress, and are, therefore, absolutely null and void; that said lease to said Crump was never approved by the Secretary of the Interior as made and required in Section Two of said Act of Congress, approved on May 27th, 1908, and it is likewise absolutely null and void as so provided in Section Five of said Act.

VIII.

That these answering defendants further charge that after said Crump had thus brought said action or suit to recover said lands, and on or about the first of June, 1913, the said Crump came to these defendants and told them that said action was a hard case and that he did not know whether he could succeed in the same or not and would take five or ten years to get through with it, during which time he might die or defendants might die, and proposed to defendants that he would give defendant, Hannah Canard Barnett Two Thousand Dollars if she would release him from said contract of employment; and that said defendant accepted said proposition and agreed to release said Crump from said contract, whereupon said Crump then told said defendant that she would have to go over before Judge Smith who was the judge of the county court of said Okfuskee County to fix the papers and that he could not go but would give a Mr Wallace the Two Thousand Dollars to give her; that she went to see said Smith who was then living at Okemah but said Smith was seriously ill and because of that fact she did not get to see him on that occasion, and on the 17th day of June, 1913, went back to see him again, but said Smith was still sick and unable to be at the court house of said county, but was then confined at his home and residence in said town of Okemah; that on that occasion, she went to his home and was admitted therein; that said Wal-

lace was also present and went into his home before said defendant was thus admitted, and after a short time, defendant was invited into his home, whereupon said Smith asked defendant if she was expecting or understood that she was to receive Two Thousand Dollars, to which she replied she was, at which time, said Wallace handed said Smith a check for Two Thousand Dollars and said Smith handed the same to defendant, Hannah Canard Barnett, and asked what she was going to do with it, to which she replied that she would put it in the bank; that said defendant took said check and at once went away and in a few days deposited the same in the bank at Weleetka in said county, and afterward used the same for her own benefit; that this narration is practically all that occurred on said occasion so far as said defendant knows; that as she was unable to speak or understand the English language she could not understand what else was then said or done; that said Wallace was the son-in-law or some close relative of said Litchfield and was interested with him in said matters with said Crump and in obtaining said lands, and was then and there acting for himself and on behalf of said Litchfield in all such matters; that at first before making said contract and lease to said Crump, said Crump desired a deed for said lands and induced said defendant to sign a deed therefor before she ascertained that it was a deed, and when she ascertained the same was a deed therefor, she objected to the same being approved by said Smith or said county court and the same was never approved but was then abandoned, and said contract and lease given, as aforesaid; that all this time said defendant positively refused to sell or convey said lands or to make any disposition thereof other than to give a lease thereon; that said defendant intended to keep said lands and so stated at that time and positively refused to make any disposition thereof at that time or any other time; that at the time said suit was brought by said Crump to recover said lands, said lands had become exceedingly valuable for oil and gas and oil and gas had then been discovered in the close proximity thereto and shortly thereafter the same was produced in very great abundance on adjacent lands and others almost contiguous thereto; and since said time, oil and gas in very great abundance has been discovered on said lands and so enhanced the value thereof to the amount of at least two million dollars; that in June, 1913, said lands were worth at least Fifty thousand dollars and had a market value therefor at that time, and in May, 1914, said lands and an adjacent tract of 160 acres were thus sold to said Kunkel for Five Hundred and Fifty Thousand Dollars, under said deeds so made to him; and said Kunkel obtained said sum from said Prairie Oil and Gas Company as a bonus for said oil and gas lease thereon.

IX.

That the complainant and the Prairie Oil and Gas Company claim that on the 17th day June, 1913, the County Court of said Okfuskee County approved said alleged deed of Defendant, Hannah Canard Barnett to said B. O. Sims for said lands, dated March 22, 1909, but these defendants state that said county court did not on said date, or any other time, approve said alleged deed and did not enter its approval of said deed on such date or at any other time. These defendants allege that the County Court of Okfuskee County was not in session on the 17th day of June, 1913, and that it was never in session from the 20th day of May, 1913, until October 6th, 1913, as shown by orders of adjournment attached as Exhibits Numbers "10" and "11" to the original answer and cross-petition of these defendants herein, and the order of October 6th, 1913, which is attached to the original cross-petition as Exhibit Number "12," all of which exhibits are here referred to and made a part of this cross-petition.

That under the law of the State of Oklahoma when said County Court was adjourned for the term it could not be again convened during the remaining part of said term. Defendants allege that A. P. Smith was Judge of said county court of Okfuskee County during the year 1913, and until his death on the 28th day of July, 1913. That the said Smith was confined to his home and was unable to hold court or to leave his room on the 17th day of June, 1913, and was not in court or in the court house or in his chambers on the 17th day of June, 1913, or thereafter, and never made the alleged order of approval of the County Court of said date, or at any other time, and never authorized or directed said order to be entered of record on the journal of said county court on said date, or at any other time and that if any such order appears of record in said County Court, or the office of the clerk thereof, the same was so placed of record therein without the authority, direction or knowledge of said County Court or the Judge thereof; and they say that the said A. P. Smith, as Judge of said County Court, never approved said alleged deed, or authorized or directed any approval thereof entered of record in said County Court, or in the office of the Clerk thereof. They further allege that since this suit was instituted these defendants, through their counsel, have made a full search of the office of the said County Court and of the Clerk thereof, for such approval of said deed on said date or otherwise, but have absolutely failed to discover or find any such approval in said office or anywhere else.

These defendants further allege that at the time they were before the said A. P. Smith at his said home and receiv-

ed said check for Two Thousand Dollars on the 17th day of June, 1913, as aforesaid. the said B. O. Sims was not present and had no knowledge of any application being made to the Judge, or of any attempt to approve of said deed, if any such approval was then attempted to be made, and that the said Sims took no part whatever in the proceedings before the said Smith, or in any attempt to have said deed approved. They allege that after said Sims had obtained said alleged deed of March 22nd, 1909, he executed to Clyde Brannan an instrument purporting to be a deed to said lands, as alleged in the amended bill of complaint, and on May 2nd, 1913, as hereinbefore alleged, disclaimed any title or interest in said lands. That on the 17th day of June, 1913, the said R. S. Litchfield was claiming to be the owner of said lands through said mesne conveyance, mentioned in said bill and amended bill of complaint, and said Wallace was then claiming an interest therein through the said Litchfield. That defendants are informed and believe, and on information and belief allege that the said check for Two Thousand Dollars given by the said Wallace to the said A. P. Smith, and then given by said Smith to the defendant, Hannah Canard Barnett, as aforesaid, was the money and property of said Litchfield, or said Litchfield and Wallace, and not the property or money of said Crump, as she then supposed it was, and was not money of the said Sims. Defendants further allege that if the said defendant, Hannah Canard Barnett, had known at that time that said check or money was being paid by said Litchfield, or by said Litchfield and Wallace, for the purpose of having said purported deed to said Sims approved by said County Court, or said Smith as the Judge thereof, she would not have taken the same, but that she was induced to take the same under the honest belief that said Crump was thus paying the same to be relieved from said attorneyship and not otherwise.

X.

Defendants further allege that neither they, nor either of them, have any recollection whatever of having signed any paper or papers whatever before said Smith on the said 17th day of June, 1913, or prior thereto, but they state that in appearing before the said Smith they were acting under the advice and instruction of their counsel for the purpose of obtaining the said Two Thousand Dollars which the said counsel had promised to pay them to be relieved from said attorneyship, and that they may have been induced to sign what now purports to be a petition for the approval of said deed to said Sims, but they allege that if they, or either of them, did actually sign such a petition they signed same without any knowl-

edge or information that said petition was a petition for the approval of said deed, and signed same under the belief that the same was some sort of a paper necessary to obtain the said Two Thousand Dollars from said Crump, and that they would not have signed the same had they understood that it was for the purpose of having said deed to Sims approved. They allege that they at all times refused to recognize said deed and had brought said action to recover said lands and intended to prosecute said action to a final determination. Defendants further allege that if the purported order relied upon by the complainant in his amended bill was ever signed by the said A. P. Smith, County Judge of Okfuskee County, it was signed by him at his home, and was not made or signed in open court or at the court house or in the Judge's chambers in Okfuskee County, and that if said order was made at all it was made at the request of the said Litchfield, and not at the instance or request of the said B. O. Sims and was done without the knowledge or consent of the defendant, Hannah Canard Barnett, and against her will, and without the knowledge or consent of the said B. O. Sims. Defendants further allege that on the 17th day of June, 1913, when she appeared before the said A. P. Smith, County Judge of Okfuskee County, that there was exhibited to said A. P. Smith a certain other check for \$2000.00 (Two Thousand Dollars) payable to said George C. Crump and signed by said Litchfield besides the check for Two Thousand Dollars that was delivered to the defendant, Hannah Canard Barnett, and represented to the said Smith that said sum of Two Thousand Dollars was being paid to the said George C. Crump by the said R. S. Litchfield for his services in connection with the said transaction, but she alleges in truth and in fact the said Litchfield paid to the said George C. Crump the sum of Five Thousand Dollars, either as compensation for his services in inducing the said defendant, Hannah Canard Barnett, to appear before the said Smith in order or for his interest in the property, or for some other consideration to these defendants unknown; and if the said A. P. Smith did actually make the order relied upon by the complainant approving the said Sims' deed, he would not have made said order if he had known that the said Crump was receiving the sum of Five Thousand Dollars and receiving more than twice as much as the defendant, Hannah Canard Barnett. And they allege that thereby if the said A. P. Smith did, in fact, make said purported order that he was induced to do so by reason of the fraud and misrepresentation of the said Wallace and Litchfield as to the consideration that was being paid to said Crump, and that he would not have made any order if he had not believed that the said Hannah Canard

Barnett and said Crump were sharing equally in the consideration that the said Litchfield was paying.

And they further allege that on the 17th day of June, 1913, said A. P. Smith had no knowledge whatever that the said Crump had promised to pay to said defendant, Hannah Canard Barnett, said sum of Two Thousand Dollars to be released from his attorneyship and had no knowledge that the said Crump had told her, the said Hannah Canard Barnett, that he would give the same to said Wallace to be given to her at the time she appeared before said Smith. And defendants allege that the said Hannah Canard Barnett never discovered that the Two Thousand Dollars received by her was not the money of said Crump until after this suit was brought by the complainant, and that the said approval of said deed, if in fact ever made, was procured by fraud thus practiced upon the said A. P. Smith, Judge of the County Court of Okfuskee County, and said Hannah Canard Barnett, and is therefore a nullity and invalid, and that said deed and the purported approval thereof were and are wholly inoperative as a conveyance of said lands. Defendants further allege that when said deed was so obtained by said Sims on March 22nd, 1909, there was no intention or purpose upon the part of either Hannah Canard Barnett or said Sims of ever having the same approved by the County Court of Okfuskee County, and that they then intended to have it approved by the County Court of Hughes County and not by the County Court of Okfuskee County, and that said deed was therefore null and void when taken and incapable of any ratification or waiver by the parties thereto.

XI.

That these answering defendants further allege that said 99-year oil and gas lease so made to said Crump by defendants, aforementioned, was by said Crump filed of record in the office of the Register of Deeds of said Creek County, Oklahoma, on the 2nd day of April, 1913, and was recorded in said office in Book 89, at page 244, that said written contract with said Crump, aforementioned, was a part of said oil and gas lease by its own terms and provisions on the face thereof, and a copy of said contract was so filed with the petition in said action so brought by said Crump to recover said lands, and made part thereof as Exhibit "A," as aforesaid; that said alleged deed for said allotment to said Sims, dated the 22nd day of March, 1909, if in fact ever signed by said Hannah Canard, was so made five days before the legal title to said lands had vested in said Hannah Canard, and said legal title thereto did not vest in said Hannah Canard until March

27th, 1909, and had not vested in said Mehaley Watson at any time during her lifetime, and thereby the legal title to said allotment did not pass under said deed when so made, and her after acquired title thereto did not, and could not, vest in said Sims or any one else, under or by reason of said deed; but such legal title thereto still remains vested in the said Hannah Canard Barnett even to the present time; and at no time heretofore has such title ever vested in any one other than said Hannah Canard Barnett; and that by reason of said facts and matters aforementioned and the recordation of said oil and gas lease, the pendency of said action and exhibits therewith filed, and said stipulation, quitclaim deed, and the outstanding legal title to said lands in said Hannah Canard Barnett, etc., aforementioned, both said complainants, W. A. Kunkel, and said Prairie Oil & Gas Company had full and complete notice and knowledge of all the rights, title, interest and claims and demands of the said Hannah Canard Barnett to said lands, long prior to the time of taking said deeds from said Litchfield, Booth and Cheney and ever thereafter to the present time, and are, therefore, not innocent purchasers thereof or of any right, title or interest in or to said lands or to any part thereof but took said deeds and said oil and gas lease with full and complete knowledge of all such rights of said answering defendants in and to said lands.

XII.

These defendants allege that the purported judgments hereinabove referred to, one of which was entered in the United States District Court for the Eastern District of Oklahoma on the 3rd day of July, 1913, and one of which was entered in the District Court of Creek County on the 11th day of July, 1913, both of which purported to quiet the title to the lands in controversy in this action in R. S. Litchfield, were and are void and of no effect because they were entered by stipulation signed by George C. Crump and J. L. Skinner, as attorneys for Hannah Canard Barnett, when, as a matter of fact, the said Crump and Skinner had no authority from the said defendant to execute or enter into any such stipulations, and the said R. S. Litchfield well knew at the time said stipulation was signed the terms of the contract between the said Crump and Hannah Canard Barnett, and because said judgments, while entered in form as judgments, were entered pursuant to stipulations and were mere agreements of the parties and did not become res judicata of the rights of the parties and were void because the agreement pursuant to which they were entered, were never approved by any authority having jurisdiction to approve the contracts and

agreements of full blood Indians for the purpose of divesting his or her title to the land, and are void because of the fact that the said Hannah Canard Barnett was and is a full blood Creek Indian and so enrolled, and inherited said lands from her deceased daughter, Mehaley Watson, and that the only manner in which the title to said lands could be transferred from the said defendants to the said Litchfield, or to any other person, was strictly pursuant to the terms, provisions and conditions of various Acts of Congress, and especially Section Nine of the Act of May 27th, 1908.

XIII.

These defendants allege that on account of the facts set forth above B. O. Sims never at any time acquired any title to said lands by virtue of said deed of March 22nd, 1909, and that no one claiming through him ever obtained any title whatever by virtue of said deed and that said R. S. Litchfield did not obtain any title by virtue of various deeds to him, and that he did not obtain any title by reason of the purported approval of the deed from Hannah Canard Barnett, by the name of Hannah Canard, to B. O. Sims, which approval purported to be dated June 17th, 1913; and that all of said purported conveyances, judgments and other instruments purporting to effect the title to said lands were and are null and void and ineffective to transfer the title from the said Hannah Canard Barnett to any other person or persons and that she is still the owner thereof. These defendants allege that the plaintiff, W. A. Kunkel, claims title to said lands by virtue of certain conveyances from Litchfield, Booth and Cheney; that the said Litchfield, Booth and Cheney, and their wives, first made to the plaintiff a special warranty deed on the 6th day of May, 1914, and that afterwards, on the 12th day of May, 1914, they executed to the said Kunkel a warranty deed. That said deeds were made in consideration of the sum of Five Hundred Fifty Thousand Dollars, and that said special warranty deed was recorded in the office of the Register of Deeds of Creek County, at page 454, of Book 99. A copy of said deed is attached to the original answer and cross-petition herein and is here referred to and made a part hereof; and the said warranty deed is recorded at page 103, of volume 106, in the office of the records of the Register of Deeds of Creek County. A copy of said deed is attached to the original answer herein as Exhibit Number "15," and is here referred to and made a part hereof.

These defendants further allege that on the 12th day of May, 1914, the said W. A. Kunkel made and executed an oil and gas lease to the Prairie Oil and Gas Company, a corpora-

tion, which company is now a party to this action, and that said lease was recorded in the office of the Recorder of Deeds of Creek County, at page 355, Volume 90. A copy of said lease is attached to the original answer herein and marked Exhibit "16," and is here referred to and made a part hereof.

These defendants are informed and believe and therefore allege that the said Prairie Oil and Gas Company paid the bonus of Five Hundred Fifty Thousand Dollars to the plaintiff, W. A. Kunkel, for said lease, and at the same time required him to execute an indemnifying bond to indemnify the said Prairie Oil and Gas Company against any loss they might sustain by reason of a defective title to said land. And these defendants allege that at the time the said Litchfield, Booth and Cheney deeded said lands to the plaintiff, W. A. Kunkel, and at the time that he executed the lease to the Prairie Oil and Gas Company, that both the plaintiff, W. A. Kunkel, and the Prairie Oil and Gas Company had notice and knowledge of the defects and irregularities with reference to the attempted conveyance of said lands to B. O. Sims and the attempted approval thereof by the County Judge, if any was made, and had notice of the concealment by the said George C. Crump from the said County Judge of the amount that he received as the consideration for the dismissal of the action brought by him, and for his failure or refusal to carry out the terms of his contract as an attorney.

XIV.

Defendants allege that soon after the Prairie Oil and Gas Company obtained said oil and gas lease they commenced to operate upon said lands for oil and gas and thereafter discovered oil and gas in paying quantities, and that it has ever since that time been in possession of said lands and operating same for oil and gas, and that it has received a large sum of money, to-wit, Five Hundred Thousand Dollars, from its operations thereon.

XV.

These defendants allege that the contracts, agreements, stipulations, decrees, deeds, and said oil and gas lease from the said plaintiff to the Prairie Oil and Gas Company, are clouds upon the title of the defendant Hannah Canard Barnett. These defendants now tender to the said B. O. Sims said sum of Five Hundred Dollars, with interest thereon from the time same was paid to Hannah Canard Barnett by him at the rate of six per cent per annum; and they tender to the said R. S. Litchfield the said sum of Two Thousand Dollars, with interest thereon from the 17th day of June, 1913, at the rate of six per cent per annum.

Wherefore, defendants pray judgment and decree cancelling all the purported conveyances effecting the title to said lands, beginning with the deed dated March 22nd, executed to B. O. Sims, and all mesne conveyances to and including the deed to W. A. Kunkle from R. S. Litchfield and others; also pray that the lease from W. A. Kunkle to the Prairie Oil and Gas Company may be canceled and set aside, and that the title to the lands in controversy in this action be quieted in the defendant Hannah Canard Barnett. And they pray that said Kunkle and the Prairie Oil and Gas Company be required to account for the oil and gas taken by them from the said lands, and that the defendant Hannah Canard Barnett have judgment against said Kunkle and said the Prairie Oil and Gas Company for the full value of all oil and gas taken from said lands by it. And these defendants further pray that a receiver be appointed to take charge of said lands and of the oil development and operation theron during the further pendency of this action. They further pray judgment for their costs and all proper relief.

LEWIS C. LAWSON,
J. C. STONE,
FRANCIS STEWART,
MALCOLM E. ROSSER,

Attorneys for Defendants Hannah Canard Barnett, and Tucker K. Barnett.

Lien claimed: Malcolm E. Rosser, Lewis C. Lawson, J. C. Stone, counsel for said Tucker Barnett and Hannah Canard Barnett.

State of Oklahoma, County of Okfuskee, to-wit:

Hannah Canard Barnett and Tucker Barnett being first duly sworn say that they are the defendants named in the foregoing answer and cross-complaint; that said answer and cross-complaint has been read to and explained to them; and that they know and understand the contents thereof; and that the charges, statements and allegations made and contained therein are true to the best of their knowledge and belief.

Hannah Canard Barnett,
Tucker K. Barnett.

Taken, subscribed and sworn to before me on this the 4th day of February, 1920. S. A. Duling, (Seal) Notary Public in and for Okfuskee County, Oklahoma.

Endorsed: Filed Feb. 10, 1920, R. P. Harrison, Clerk U. S. District Court.

ANSWER OF THE CROSS-DEFENDANT, W. A. KUNKEL, TO THE AMENDED CROSS-BILL OF TUCKER K. BARNETT AND HANNAH CANARD BARNETT.

Comes now the cross-defendant, W. A. Kunkel, and reserving all manner of exceptions that may be had to the uncertainties and imperfections of the amended cross-bill of said defendants, to the original and amended bill of the cross-defendant, and for his answer thereto, or to so much thereof as he is advised is material to be answered, alleges and says:

He admits that the defendants, Tucker K. Barnett and Hannah Canard Barnett, are husband and wife, and are duly enrolled members of the Creek tribe of Indians, but as to whether the said Hannah Canard Barnett is inexperienced in the value of property and in the transaction of business, or whether she is or is not able or capable of fully understanding or comprehending business transactions, or whether she is tractable and easily controlled, persuaded and influenced, and easily imposed upon, this cross-defendant neither admits nor denies, but says that the allegations of the cross-complainant in that respect are immaterial and in no way affect the title of the cross-defendant to the lands in controversy.

He admits that the said Hannah Canard Barnett is the mother and sole heir at law of Mehaley Watson, deceased, who was the allottee of the land in controversy.

He denies all the allegations in paragraph III of said cross-bill and further says that the said allegations in said paragraph are immaterial and in no way affect the title of the cross-defendant to the lands in controversy for the reason that said cross-defendant is a bona fide purchaser of said lands under a deed duly approved by the County Court having jurisdiction in the premises, as hereinafter pleaded and set forth.

As to whether the said Mehaley Watson was a resident of Okfuskee County at the time of her death, he neither admits nor denies, but alleges and says that if the said Mehaley Watson was a resident of Okfuskee County at the time of her death, the conveyance under which he claims title to the land in controversy, to-wit, the deed from Hannah Canard Barnett to B. O. Sims, dated March 22, 1909, was duly approved by the County Court of said Okfuskee County on June 17, 1913, and that if said Okfuskee County was the residence of the said Mehaley Watson at the time of her death, the said County Court of said county was the court having jurisdiction to approve said deed, and that he thereby acquired a valid and legal title to the lands thereby conveyed.

He admits that upon the death of said Mehaley Watson, the said Hannah Canard Barnett acquired said lands by descent and inheritance as the sole and only heir at law of the said Mehaley Watson, to the exclusion of all other persons whomsoever, and admits that on the 22nd day of March, 1909, B. O. Sims acquired said lands by purchase from the said Hannah Canard Barnett and admits that the County Court of Hughes County, Oklahoma, made an order approving said deed, but as to whether Hughes County was the residence of said Mehaley Watson at the time of her death, and as to whether the County Court of said Hughes County was the court having jurisdiction to approve such deed, the cross-defendant neither admits nor denies, and alleges that the same is immaterial inasmuch as the said deed was duly approved by the County Court of Okfuskee County, and which said court the cross-complainants allege and state to be the court having jurisdiction to approve such deed.

That as to the allegations contained in paragraphs V, VI, VII and VIII of said cross-bill, relative to the employment by the cross-complainant, Hannah Canard Barnett, of counsel for the purpose of bringing suit to quiet title to the lands in controversy, and the proceedings had under said contract of employment, the cross-defendant neither admits nor denies the same but prays strict proof thereof, and further says that the said allegations are immaterial and in no way affect his title to said lands.

The cross-defendant denies that the County Court of Okfuskee County was not in session on the 17th day of June, 1913, but on the contrary alleges and says that said court was open for the transaction of probate business on said date. He admits that A. P. Smith was the duly elected and qualified Judge of said County Court of Okfuskee County, and in this connection he denies that the said court did not approve the execution of the deed of Hannah Canard Barnett to B. O. Sims, executed March 22, 1909, and denies that the said order of approval was not signed by said Judge, but alleges the fact to be that a petition was duly filed in said court for the approval of said deed, and that said petition was heard by the court and that an order was duly made by said court approving said conveyance, and which said order was duly filed in said court and made a matter of record therein.

As to whether the journal entry of said order of approval was actually signed by the Judge of said court at his home and residence and not in open court, this cross-defendant has no knowledge and neither admits nor denies the same, but says that same, if true, is immaterial and is not a fact of which

cross-complainants can avail themselves for the purpose of invalidating or affecting the title of this cross-defendant, and denies that such order, so signed by said Judge, at his said home and residence, would invalidate said approval or render said order of approval null and void.

The cross-defendant denies all the allegations in paragraphs X, XI and XII of said cross-bill, and further states that said allegations are immaterial and in no way affect the title of the cross-defendant to the lands in controversy.

The cross-defendant, for a further answer to the cross-bill of said Tucker K. Barnett and Hannah Canard Barnett, alleges and says that the said B. O. Sims acquired under his warranty deed of March 22, 1909, from Hannah Canard Barnett, a legal and valid fee simple title to the lands in controversy, which deed was duly approved by the County Court of Okfuskee County and which court had jurisdiction to so approve said deed; that the same by various mesne conveyances from said B. O. Sims became and was vested in said R. S. Litchfield, Thomas J. Booth and H. G. Cheney, and that on the 6th day of May, 1914, this cross-defendant obtained from the said R. S. Litchfield and Mary H. Litchfield, his wife, Thomas J. Booth and Laura C. Booth, his wife, and H. G. Cheney and Ella K. Cheney, his wife, a warranty deed whereby his said grantors granted, bargained, sold and conveyed unto him the lands in controversy; that the said grantors were seised in fee and were in possession of said lands; that he paid his grantors for such deed more than twenty thousand dollars (\$20,000.00) as consideration for the said conveyance; that said consideration was bona fide and was actually and truly paid to his said grantors. This cross-defendant further says that at the time of paying the consideration for said deed, and at the time of the delivery of said deed, he had no notice or knowledge and did not, prior to that time, have notice or knowledge, of the various transactions set forth in said cross-complaint, between said Hannah Canard Barnett and said B. O. Sims, or between the said Tucker K. Barnett and the said Hannah Canard Barnett, and their counsel employed by them, or between said counsel and the said R. S. Litchfield, or whether said A. P. Smith, as County Judge of Okfuskee County, executed the order of approval at his home and residence and not in open court, or whether the said Hannah Canard Barnett was incapable of understanding business transactions, or whether she understood or did not understand or comprehend the purpose and object of the payment to her at the time of the approval of her deed to B. O. Sims by the County Judge of Okfuskee County, and this cross-defendant had no knowl-

edge or notice until the filing of said cross-complaint of any of the various circumstances therein alleged, and upon which the relief prayed for is demanded, but charges and avers that his purchase of said lands and the payment of the consideration herein mentioned, was in reliance upon the record made as to the various transactions mentioned and referred to, and in reliance upon the apparent legal title as shown thereby in his grantors.

Wherefore, this cross-defendant, having fully answered, prays that said cross-bill be dismissed.

JAS. A. VEASEY,
J. B. PATTERSON,
WEST, SHERMAN,
DAVIDSON & MOORE,

Attorneys for Cross-Defendant, W. A. Kunkel.

Endorsed: Filed April 29, 1920, R. P. Harrison, Clerk
U. S. District Court.

ANSWER OF THE CROSS-DEFENDANT, THE PRAIRIE
OIL & GAS COMPANY, TO THE AMENDED CROSS-
BILL OF TUCKER K. BARNETT AND HANNAH
CANARD BARNETT.

Comes now the cross-defendant, The Prairie Oil & Gas Company, and, reserving all manner of exceptions that may be had to the uncertainties and imperfections of the amended cross-bill of said defendants, to the original and amended bill of the cross-defendants, and for its answer thereto, or to so much thereof as it is advised is material to be answered, alleges and says:

It admits that the defendants, Tucker K. Barnett and Hannah Canard Barnett, are husband and wife, and are duly enrolled members of the Creek tribe of Indians, but as to whether the said Hannah Canard Barnett is inexperienced in the value of property and in the transaction of business, or whether she is or is not able or capable of fully understanding or comprehending business transactions, or whether she is tractable and easily controlled, persuaded and influenced, and easily imposed upon, this cross-defendant neither admits nor denies, but says that the allegations of the cross-complaint in that respect are immaterial and in no way affect the title of the cross-defendant to the lands in controversy.

It admits that the said Hannah Canard Barnett is the

mother and sole heir at law of Mehaley Watson, deceased, who was the allottee of the land in controversy.

It denies all the allegations in paragraph III of said cross-bill and further says that the said allegations in said paragraph are immaterial and in no way affect the title of the cross-defendant to the lands in controversy for the reason that said cross-defendant is a bona fide purchaser of its title thereto as hereinafter pleaded and set forth.

As to whether the said Mehaley Watson was a resident of Okfuskee County at the time of her death, it neither admits nor denies, but alleges and says that if said Mehaley Watson was a resident of Okfuskee County at the time of her death, the conveyance under which its lessor claims title to the land in controversy, to-wit, the deed from Hannah Canard Barnett to B. O. Sims, dated March 22, 1909, was duly approved by the County Court of said Okfuskee County on June 17, 1913, and that if said Okfuskee County was the residence of the said Mehaley Watson at the time of her death, the said county court of said county was the court having jurisdiction to approve said deed, and that he thereby acquired a valid and legal title to the lands thereby conveyed.

It admits that upon the death of said Mehaley Watson, the said Hannah Canard Barnett acquired said lands by descent and inheritance as the sole and only heir at law of the said Mehaley Watson, to the exclusion of all other persons whomsoever, and admits that on the 22nd day of March, 1909, B. O. Sims acquired said lands by purchase from the said Hannah Canard Barnett and admits that the County Court of Hughes County, Oklahoma, made an order approving said deed, but as to whether Hughes County was the residence of said Mehaley Watson at the time of her death, and as to whether the County Court of said Hughes County was the Court having jurisdiction to approve such deed, the cross-defendant neither admits nor denies, and alleges that the same is immaterial inasmuch as the said deed was duly approved by the County Court of Okfuskee County, and which said Court the cross-complainants allege and state to be the court having jurisdiction to approve such deed.

That as to the allegations contained in paragraphs V, VI, VII and VIII of said cross-bill, relative to the employment by the cross-complainant, Hannah Canard Barnett, of counsel for the purpose of bringing suit to quiet title to the lands in controversy, and the proceedings had under said contract of employment, the cross-defendant neither admits nor denies the same, but prays strict proof thereof, and further says

that the said allegations are immaterial and in no way affect its title to said lands.

The cross-defendant denies that the County Court of Okfuskee County was not in session on the 17th day of June, 1913, but on the contrary alleges that said court was open for the transaction of probate business on that date. It admits that A. P. Smith was the duly elected and qualified judge of said County Court of Okfuskee County, and in this connection denies that the said court did not approve the execution of the deed of Hannah Canard Barnett to B. O. Sims, executed March 22, 1909, and denies that the said order of approval was not signed by said judge, but alleges the fact to be that a petition was duly filed in said court for the approval of said deed, and that said petition was heard by the court and that an order was duly made by said court approving said conveyance, and which said order was duly filed in said court, and made a matter of record therein.

As to whether the journal entry of said order of approval was actually signed by the judge of said court at his home and residence and not in open court, this cross-defendant has no knowledge and neither admits nor denies the same, but says that same, if true, is immaterial and is not a fact of which cross-complainants can avail themselves for the purpose of invalidating or affecting the title of this cross-defendant, and denies that such order, so signed by said judge, at his said home and residence, would invalidate said approval or render said order of approval null and void.

The cross-defendant denies all the allegations in paragraphs X, XI and XII of said cross-bill, and further states that said allegations are immaterial and in no way affect the title of the cross-defendant to the lands in controversy.

It admits that on the 12th day of May, 1914, it obtained a lease from W. A. Kunkel, covering the lands in controversy, and that it took possession and proceeded to develop and is now operating said lands for oil and gas purposes, under its said lease, and admits that it has not accounted to the cross-complainants for the oil and gas taken from said lands.

For a further answer to the cross-complaint, this cross-defendant alleges and says that on the 12th day of May, 1914, it obtained a lease from said W. A. Kunkel whereby the said W. A. Kunkel granted, demised, leased and let unto the defendant for the purpose of mining and operating the same for oil and gas, the lands in controversy, among other lands; that its said lessor, was apparently and of record seised in fee of said lands and was in possession thereof; that it paid the said

W. A. Kunkel, its lessor, for said lease, more than five thousand dollars (\$5,000.00) by way of bonus, and it agreed, as a further consideration for said lease, to pay to its said lessor, W. A. Kunkel, one-eighth of all oil produced from said land, and that it has been and is now complying with all the terms and conditions of said lease, and has paid and is continuing to pay to its said lessor all the royalties and moneys provided for in said lease; that the consideration paid to its said lessor for said lease was bona fide and actually and truly paid to its said lessor. It is further alleged by said cross-defendant that at the time of paying the consideration for said lease, and at the time of the delivery thereof to it, and at the time it took possession of said lands under said lease, it had no notice or knowledge of the various transactions set forth in said cross-complaint, between said Hannah Canard Barnett and said B. O. Sims, or between the said Tucker K. Barnett and the said Hannah Canard Barnett and their counsel employed by them, or the transactions between said counsel and the said R. S. Litchfield, or whether said A. P. Smith, as County Judge of Okfuskee County, executed the order of approval of the deed at his home and residence and not in open court, or whether said Hannah Canard Barnett was incapable of understanding business transactions or whether she understood or did not understand or comprehend the purpose and object of the payment to her at the time of the approval of her deed to B. O. Sims by the County Court of Okfuskee County, and this cross-defendant had no knowledge or notice until the filing of said cross-complaint of any of the various circumstances therein alleged, and upon which the relief prayed for is demanded, but charges and avers that its purchase of said lease and the payment of the consideration therefor and its entry upon said lands for the purpose of producing oil and gas therefrom was in reliance upon the record made as to the various transactions mentioned and referred to and in reliance upon the apparent legal title as shown thereby, in its lessor.

Wherefore, having fully answered, this cross-defendant prays that said cross-bill be dismissed.

JAS. A. VEASEY,
J. B. PATTERSON,
WEST, SHERMAN,
DAVIDSON & MOORE,
Attorneys for Cross-Defendant,
The Prairie Oil & Gas Co.

Endorsed: Filed April 29, 1920, R. P. Harrison, Clerk
U. S. District Court.

(Decree Filed January 31, 1921.)

Be It Remembered, That this cause came on to be heard at this Term, to-wit, on January 17, 1921, upon the pleadings and proof, and was argued by counsel; and thereupon, upon consideration thereof, the issues were found for the complainant and cross-defendant, W. A. Kunkel and the defendant, The Prairie Oil & Gas Company, and it was ordered, adjudged and decreed as follows:

That the complainant, W. A. Kunkel, is the owner of an absolute fee simple estate in and to the lands in controversy in this cause, to-wit:

The North Half ($N\frac{1}{2}$) of the North Half ($N\frac{1}{2}$) of section twenty-one (21), township seventeen (17) North, range seven (7) east, in Creek County, Oklahoma,

and that the Prairie Oil & Gas Company is the owner of a valid and existing oil and gas mining lease thereon; that the title and rights of the said W. A. Kunkel and The Prairie Oil & Gas Company are free of any claim, right, title or interest on the part of the defendants, Hannah Canard Barnett and Tucker K. Barnett, or either of them; that the title of the complainant in and to said land is hereby established and the same is quieted in him as against any assertion of right, title or interest of the defendants, Hannah Canard Barnett and Tucker K. Barnett, or either of them.

It was further ordered, adjudged and decreed by the Court that said defendants have no right or interest or estate in and to said lands, or any part thereof.

It was further ordered, adjudged and decreed that the said defendants, Hannah Canard Barnett and Tucker K. Barnett, and each of them, and any and all persons claiming, or to claim, by, through or under them, or either of them, are hereby perpetually enjoined and restrained from asserting any right, title, interest or estate in and to said lands, or any part thereof, adverse or hostile to the absolute fee simple title of the complainant herein adjudged and determined, and from instituting, maintaining or prosecuting in any court any suit or proceeding against the complainant or against said The Prairie Oil & Gas Company, or any person claiming under said complainant, or said The Prairie Oil & Gas Company, adverse or hostile to the title of the complainant, and from interfering with, or molesting in any manner whatsoever, the said complainant or said The Prairie Oil & Gas Company, or any person claiming under the said complainant, in peaceable and uninterrupted possession and enjoyment of said lands or any part thereof.

To all of which judgments, findings and orders of the Court, the defendants, Hannah Canard Barnett and Tucker K. Barnett and each of them, except, and their exceptions are allowed by the Court.

Done in open Court at Muskogee, Oklahoma, this 31st day of January, 1921.

R. L. WILLIAMS, *Judge.*

O. K. as to form. Malcolm E. Rosser.

Filed Jan. 31, 1921.

STIPULATION TO PRINT THE EVIDENCE IN THE
LANGUAGE OF THE WITNESSES.

It is hereby stipulated by and between the plaintiff, W. A. Kunkel, and the defendants and cross-petitioners, Tucker K. Barnett and Hannah Canard Barnett, that all the evidence in the above entitled and numbered cause shall be included in the record upon appeal, and all the testimony of the witnesses be printed and reproduced in the exact words of the witnesses, subject to the permission of the Court under the rules.

PRESTON C. WEST,
ROGER S. SHERMAN,
A. A. DAVIDSON,
GREY MOORE,

Attorneys for W. A. Kunkel and
Prairie Oil & Gas Company.

LEWIS C. LAWSON,
CHAS. A. MOON,
FRANCIS STEWART,
MALCOLM E. ROSSER,

Attorneys for Tucker K. Barnett
and Hannah Canard Barnett.

Endorsed: Filed June 27, 1921, W. V. McClure, Clerk
U. S. District Court.

ORDER PERMITTING TESTIMONY TO BE PRINTED
IN FULL.

On this 27th day of June, A. D. 1921, came on to be heard the application of the defendants and cross-petitioners, Tucker K. Barnett and Hannah Canard Barnett, for an order to include in the record upon appeal in this case all the evidence

introduced at the trial, in the exact language of the witnesses, and it appearing to the Court that all parties to this cause have agreed that said evidence be included in the record upon appeal and reproduced in said record in the exact language of the witnesses, and it appearing that there is good cause for including all the language in the record upon appeal to the United States Circuit Court of Appeals for the Eighth Circuit.

It is therefore considered and ordered that said record shall contain all evidence and that the testimony of the witnesses shall be reproduced and printed in the exact language of the witnesses.

R. L. WILLIAMS, *Judge.*

Endorsed: Filed June 27, 1921.

(Statement of the Evidence.)

In the United States District Court in and for the Eastern District of Oklahoma.—W. A. Kunkel, Plaintiff, vs. Santa Watson, et al., Defendants.—No. 2154 Equity.

Be It Remembered, that on the 17th day of January, 1921, this cause coming on for hearing before the Honorable R. L. Williams, sitting at Tulsa, Oklahoma, and the plaintiff being represented by Mr. A. A. Davidson, of Tulsa, Okla., and Mr. John B. Patterson, of Tulsa, Okla., and Mr. T. J. Fleming, of Tulsa, Okla., and Mr. James A. Veasey, of Tulsa, Okla., and the defendants being represented by Mr. M. E. Rosser, of Muskogee, Okla., and Mr. Francis Stewart, of Muskogee, Okla., and Mr. Louis C. Lawson, of Holdenville, Oklahoma, and counsel for both the plaintiff and defendants announcing to the court that they were ready for trial, the following proceedings were had, to-wit:

Mr. Davidson: The complainant offers in evidence as exhibit 1, stipulation signed by counsel in this case.

The Court: Unless there is an objection—

Mr. Rosser: No, we agreed to this to shorten the record.

The Court: It is admitted.

Mr. Davidson: We offer in evidence as complainant's exhibit 2, certified copy of warranty deed from Hannah Canard to B. O. Sims, dated March 22, 1909, and also copy of order of county court of Okfuskee County approving the deed, both of which documents are certified by the County Clerk of Creek County.

Mr. Lawson: We want to object to that deed and any evidence pertaining to the same. We deny—

The Court: On what grounds do you make an objection?

Mr. Lawson: I have quite a number of grounds here which I have written out.

The Court: I want the specific grounds.

Mr. Lawson: Here are the specific grounds (referring to the written instrument).

The Court: It does not take that many grounds for the Court to understand. You can file that.

Mr. Lawson: The Circuit Court of Appeals in the Black case held the county judge away from the county seat could approve one of these deeds and when placed on record that operates as an approval of that deed. We do not accept that. We do not believe—

The Court: You will have to accept that in this court.

Mr. Lawson: What I was coming to, is this—

The Court: State your grounds of objection so I can rule on it.

Mr. Lawson: Because said copy is simply a copy of what purports to be another copy of said alleged order, illegally and improperly entered of record in the office of said county court, without authority of law. In other words, there is no law, state or federal, requiring one of these approvals to be entered of record anywhere. The original in this case is gone, or at least was gone, and nobody has been able to get hold of it.

The Court: Where does this land lie?

Mr. Lawson: It lays in Creek County.

The Court: It was approved—

Mr. Lawson: In Okfuskee County. We deny it, but they contend—

The Court: Prima facie it was approved there?

Mr. Lawson: Yes, sir.

The Court: Ever recorded there?

Mr. Davidson: Was recorded in the county court but this document is a deed and order in one instrument which was filed in Creek County as one instrument.

The Court: Let me see it.

Mr. Lawson: That the original order?

Mr. Davidson: No, sir.

Mr. Lawson: That is what I thought—just a certi-

fied copy—supposed to be a copy of what once existed, but does not know whether it ever existed.

The Court: This is an order that was made in Hughes County?

Mr. Davidson: That is Okfuskee County, is it not?

The Court: No, I don't think this is competent unless—

Mr. Davidson: Is this not signed by Judge Smith?

The Court: This is signed by Judge Gardiner.

Mr. Davidson: That is the wrong one. As to the order, we offer only the latter part, as to the deed itself. We have a certified copy of the order.

The Court: I will permit a certified copy of the deed to go in with the understanding you will show the approval afterwards.

Mr. Davidson: Yes, sir. We have it here. I thought we had the other order.

The Court: I will just let the certified copy of the deed go in but not that order.

Mr. Lawson: We want to object to that. In order to facilitate matters, I thought it would be easier to put in all these objections and exceptions to the introduction of the deed as well as the approval and just let it be handed to the court stenographer and let it be entered.

The Court: All right—let me see that.

Mr. Lawson: As I said, we are trying to save the record to the Supreme Court of the United States on the approval.

The Court: Very well, let it be entered on the record. I just allow the certified copy of the deed to go in for the present with the understanding that you will follow that up by showing that the deed was approved by the county court of Okfuskee County, it being admitted that the county court of that county had jurisdiction of the estate.

(The objections offered in writing by Mr. Lawson and above referred to and by the Court permitted to be entered on the record, are as follows, to-wit:)

In the District Court of the United States for the Eastern District of Oklahoma.—W. A. Kunkle, Plaintiff, vs. Santa Watson, et al., Defendants.—No. 2154.

Comes now the defendants Hannah Canard Barnett and Tucker K. Barnett, and objects to the plaintiff W. A. Kunkle

and the Prairie Oil and Gas Company or any other person introducing in evidence in said cause the purported copy of the alleged order of approval of the county court of Okfuskee county, or A. P. Smith, the county judge thereof, of the alleged deed of said Hannah Canard Barnett to B. O. Sims for the lands in controversy, dated the 22nd day of March, 1909, purporting to have been made by said county court on the 17th day of June, 1913; and also object to any evidence herein in any wise pertaining to said order or action of said county court pertaining thereto, upon the following grounds and for the following reasons:

First. Because said copy is simply a copy of what purports to be another copy of said alleged order, illegally and improperly entered of record in the office of said county court, without authority of law.

Second. Because there is no law, state or federal, requiring the approval of full-blood Indian heirs to inherited lands, of conveyances, provided for in section 9 of said act of Congress, approved May 27, 1908, and relied upon by said defendants in said cause, to be anywhere recorded or entered of record anywhere, or authorizing a duly certified copy of such an order to be used in evidence, in any cause or proceeding; and the alleged entry of said alleged order on the record books of said county court was, and still is, illegal and without authority of law, and therefore null and void, and was so made and entered in violation of said acts of Congress mentioned in the pleading of said defendants filed in said cause, and hereby again relied upon by them in this proceeding and as to said alleged order, copy, etc.

Third. Because section 5099 of the Revised Laws of Oklahoma, 1910, has no application to the approval of such conveyances of such full blood Indians and does not require or permit such orders to be recorded as therein or otherwise provided, or that duly certified copies thereof or of such recorded instruments therein embraces, to be offered or received in evidence in judicial matters, as therein made and provided as to other instruments.

Fourth. Because, under and by reason of section 9 of said Act of Congress approved May 27, 1908, hereby and in every stage of this proceeding relied upon by said defendants, said deed of said Hannah Canard Barnett to said B. O. Sims for said lands in controversy had to be approved by the County Court of said Okfuskee County, Oklahoma, wherein said deceased allottee, Mahaley Watson, lived, resided and had her place of residence and abode, at the time of her death and during her lifetime, and not by the judge thereof, and there-

fore such approval had to be in writing and made under the sanction and judgment of said court, and not the judge thereof, during a session of such court, and during the time and place prescribed by the laws and Constitution of said State of Oklahoma, for holding such county court, and not otherwise; that said County Court of said Okfuskee county had adjourned for the term on the 20th day of May, 1913, as shown by a duly certified copy of such adjournment filed as exhibit with the answer and cross-petition of said defendants, and under the laws of said state, could not be reconvened for legal purposes during said term, or at any time prior to the July term (1913) of said court; and said court was therefore not in session, and could not legally be in session, on the 17th day of June, 1913, when said alleged order of approval of said deed purports to have been made by said county court; and said alleged order of approval, if in fact ever attempted to be made by said court or judge thereof, which is not admitted but denied by said defendants, was, and still is, absolutely null and void, and ineffectual in law for any and all purposes, and was thus made, if at all, in open violation of said section and Act of Congress, and is repugnant thereto, and therefore a nullity and failed to operate under said act and otherwise as a valid approval of said deed.

That said approval of said deed, if in fact ever made by said county court, is itself the best and only competent evidence of such approval, and must be produced in evidence in said proceedings as to the validity of said deed, under said act and as to the validity of said deed thereunder.

Sixth. Because said alleged order of approval, if in fact ever made, was so made, signed and acted upon by said A. P. Smith simply as such county judge of said Okfuskee County, and not as such County Court, and not in open court or during a session of such court, but was so made in vacation, and at the home and residence of said Smith while said Smith was confined at his home with extreme sickness from which he never recovered; and because if said alleged order was ever so made by said Smith, and so entered in record on the books of said county court, the recordation of said order on said books and in said office and the filing thereof therein, was so done without the orders, directions or suggestions of said county court or said A. P. Smith as the judge thereof, and without his knowledge or consent; but was merely the voluntary act of the clerk of said county court in so entering the same on said books, contrary to and in violation of said Act of Congress and the requirements of section 9 thereof; and therefore both said deed and said alleged approvals thereof are absolutely null and void; under said act and es-

pecially sections 5 and 9 thereof, hereby relied [] by said defendants herein and on trial of said cause.

Seventh. Because said alleged order of June 17th, if in fact ever made, was so obtained and said Smith induced to sign the same, without the knowledge or consent of said defendants and especially said Hannah Canard Barnett, and against their will and desire, and without said defendants then knowing or having any knowledge or information whatever that said deed was then being approved or intended to approve the same on said occasion or otherwise, and was therefore a fraud upon said defendants, and upon said court and against and upon said Act of Congress, whereby said court had no power, authority or jurisdiction to approve said deed under said act or otherwise, and such approval thereby became a nullity under said act.

Eighth. Because both said deed to said Sims and the alleged approvals thereof by the county court of both said Hughes county and Okfuskee county are absolutely null and void and were taken, had and obtained in violation of said Acts of Congress, and especially said act approved April 26, 1906, and May 27, 1908, and section 5 of said first named act, and sections 5 and 9 of said last named act; and said deed was so taken before said Hannah Canard Barnett had acquired or obtained the legal title to said lands under said first named act, and her after-acquired legal title thereto never vested in or was acquired by said Sims under said deed or otherwise.

Ninth. Because both said deed and said approvals thereof, if so made, are absolutely null and void under section 2646 of said Revised Laws of Oklahoma, 1910, for the reasons set forth in the answer and cross-petition of said defendants filed in said cause and the amended answer and cross-petition herein of said defendants.

Mr. Davidson: We now offer in evidence exhibit 3, certified copy of order of approval of the Okfuskee County deed, Hannah Canard to B. O. Sims of March 22, 1909.

The Court: Let me see that.

Mr. Lawson: I want to get an objection—to this present matter—

The Court: You have your objection as you made it and I overrule it to the extent I stated.

Mr. Lawson: I understood this (referring to the written objections) may be filed and overruled?

The Court: Give it to the reporter and he may set it

out as you have set it out and I admit the certified copy of the deed as it appears of record in Creek County in accordance with that certificate on the ground it is admitted that the County Court of Okfuskee County had jurisdiction of that estate. I admit it with the understanding it is to be followed up with the proof that a proper order of that court was made approving the deed and you may have your exceptions.

Mr. Lawson: Give us an exception. There was one thing that was not distinctly brought out before your Honor. We deny the execution of that deed—

The Court: I understand, but it appears to me that when a deed is put on record duly acknowledged and the record shows it duly approved that that prima facie admits it and the burden is on you to show that it was not executed.

Mr. Lawson: I think you are right about it, but we want to get in the objection.

The Court: Very well. I will permit this exhibit 3. It appears to be in due form and I will admit it subject to the said objections.

Mr. Rosser: And our exceptions?

The Court: Very well.

Mr. Davidson: We offer in evidence plaintiff's exhibit 4, a copy of the entry of the minute book of the caption of the office—that was before the act of county clerk—caption of office of County Judge of Okfuskee County.

The Court: What exhibit is that?

Mr. Davidson: No. 4. Showing the filing of the petition for approval and order approving the deed.

Mr. Rosser: We object as not being the best evidence.

Mr. Davidson: We have the book here if the court wants it.

Mr. Rosser: The best evidence is what was filed or a certified copy.

The Court: Introduce the book if you have it here.

Mr. Davidson: Want the original book?

Mr. Rosser: I want the original that was filed.

Mr. Davidson: The objection does not go to this not being the best evidence.

The Court: I will let you introduce the book and show the original record—

Mr. Davidson: Mr. Jones, will you take the stand?

The Court: Get the original book.

Whereupon Mr. M. C. JONES, a witness on behalf of the plaintiff, being first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

Direct Examination of Mr. M. C. Jones by Mr. Davidson.

Q. You may state your name, Mr. Jones? A. M. C. Jones.

Q. Are you county clerk of Okfuskee County? A. Yes, sir.

Q. Have you with you—what do you call that book?

A. This is land approval fee record No. 1.

Q. Are you the custodian of that book? A. Yes, sir.

The Court: Record of what court?

A. County Court of Okfuskee County.

The Court: What official position do you hold?

A. County clerk.

The Court: What county?

A. Of Okfuskee County.

The Court: And as such court clerk you are the lawful custodian of that book?

A. Yes, sir.

The Court: Go ahead.

Q. I want to ask you if there is a record in that book of the filing of a petition for the approval of a deed executed by Hannah Canard Barnett and Tucker K. Barnett, her husband, to B. O. Sims?

Mr. Lawson: Hannah Canard and Tucker Barnett interpose the same objection as to all other records to this deed and approval, etc.

The Court: I suppose this is offered to show—

Mr. Davidson: In view of the allegation it was not done in open court. We say the records show it was—made a court record. That is the point.

The Court: Very well, I overrule the objection.

Mr. Rosser: Your Honor, we object to this as not being the best evidence of the filing—the instrument itself with the file mark is the best evidence.

The Court: Suppose the instrument is lost?

Mr. Rosser: They ought to prove it.

The Court: I will allow it.

Mr. Rosser: We except.

Q. Do you find the entry? A. Yes, sir.

The Court: Make an exhibit of the book and if they want the whole record, they may have it. Put the page in. When people want a record, get the record—

Q. What page is that? A. Page 391.

Mr. Davidson: Plaintiff offers in evidence page 391 of the book identified by the witness as land approval fee record No. 1 of the County Court of Okfuskee County, Oklahoma.

The Court: If you have any objection, make it.

Mr. Rosser: We object because this is not the best evidence. The best evidence of the filing of the petition would be a copy of it with the file mark thereon. We object for the further reason that this is not a book authorized or required by law to be kept of these transactions.

The Court: Overruled.

Mr. Rosser: We except.

Mr. Davidson: Now in view of the fact that this is a public record we desire to substitute.

The Court: No, I will let the stenographer make a copy.

Mr. Rosser: If it is a copy—we have no objection.

The Court: No, I will let the whole page go in and the stenographer will copy that in the record.

Cross Examination of Mr. M. C. Jones by Mr. Rosser.

Q. Mr. Jones, you have the journal on which you keep the county court proceedings of Okfuskee County, haven't you—minute book on which you write out the proceedings?

The Court: Did they then?

Q. Did you at the time in June, 1913—were you clerk at that time?

A. I was not clerk at that time. I have been clerk since 1917.

Q. From your knowledge of the records that were kept prior to the time you were clerk that you have acquired since you have been clerk, did they keep a journal in 1913 on which court orders were entered, written out and transcribed at length? A. I think they did.

Q. You also kept in 1913 a fee book on which fees were charged to parties in different cases, didn't you? You have a fee book now on which you make charges? A. Yes, sir.

Q. And they kept a similar fee book in 1913 to which you are keeping now?

The Court: That book was kept in 1913 you produced?

A. Yes, but he is asking me about a fee book. This is headed "Minute Book."

The Court: Did you keep a fee book like that?

A. Kept a fee book. Not like that, and also minute record.

Q. This is a journal of the court on which orders are entered—

The Court: At the time—1913?

A. That was entered by the court clerk.

Q. They also kept a journal at that time in which orders were entered at length—orders of court?

Mr. Davidson: Are you referring to orders with reference to approval of full-blood deeds or orders generally?

Mr. Rosser: Orders generally.

Mr. Davidson: I object then as being incompetent, irrelevant and immaterial.

The Court: I will let him ask it and then you can ask whether they did it as to full-blood approvals.

Mr. Rosser: Answer the question, did they?

The Court: If you examined the record they had so you know how they kept the record in 1913?

A. That is pretty hard for me to answer.

The Court: You know whether you know it or not?

A. Yes, I know whether I know it or not.

Q. Did they keep a journal different and separate as to that you produced here as to orders?

A. Wherein all court orders are record.

Q. That include orders approving full-blood deeds?

A. All orders approving full-blood deeds are record in the journal?

Q. At full length? A. Yes, sir.

Q. And fees were kept also in a different book?

A. Separate book.

The Court: Do you know the handwriting in which that entry is made?

A. Yes, I think so.

The Court: Who?

A. N. D. Dosey.

The Court: What position did N. D. Dosey hold?

A. He was clerk of the County Court at that time. They were not both under the same clerk.

The Court: That was before they were consolidated as to court clerk?

A. Yes, sir.

The Court: And he was clerk of the court at that time?

A. Yes, sir.

The Court: Go ahead.

Q. And this is not the fee book? The fees are not charged here?

A. I don't see any fees there.

Q. The fees are not charged in this book at all?

A. I don't see any.

The Court: What is that record?

Mr. Rosser: This is simply a memorandum.

The Court: No, I am asking him. What is that record—what was it used for at that time?

A. It is for the minutes the clerk kept of full-blood approvals.

Mr. Rosser: I think your Honor can see what it is. Just look at it.

Mr. Davidson: It is not a general fee book at all.

The Court: What did you call it—similar to a bench docket the judge would keep?

A. Yes, sir; similar to that that the clerk keeps.

The Court: Simply notation of the judge's orders to be entered?

A. Yes, sir.

The Court: I will let it go in.

Mr. Rosser: We except.

Further Direct Examination of Mr. M. C. Jones by Mr. Davidson.

Q. Was it kept and is there now kept in the County Court a journal in which the orders of approval of full-blood deeds are kept and transcribed at length?

A. Yes, sir; journal.

Q. Have you such a book with you? A. Yes, sir.

Q. What do you call that journal?

A. That is the record for approval of Indian lands No. 2.

Q. Such a book is kept in your office? A. Yes, sir.

The Court: Is that the book?

Mr. Davidson: I want to show it is the practice to keep such a book at all times.

Q. Do you keep such a book now? A. Yes, sir.

Q. Is that one of the books? A. Yes, sir.

Q. Are you the custodian of that book? A. Yes, sir.

Q. As court clerk of Okfuskee County? A. Yes, sir.

Q. I will ask you to turn to pages 384 and 385 and I will ask you to state whether that journal contains a record of the order of the County Court of Okfuskee County approving a deed dated March 22, 1909, by Hannah Canard and Tucker Barnett—of Hannah Canard to B. O. Sims?

Mr. Lawson: The defendants want to interpose the same objection—written objection heretofore filed.

The Court: Very well.

Mr. Lawson: We except.

Q. Being order of County Court dated June 17, 1913?
A. Yes, sir.

The Court: Any objection?

Mr. Rosser: Yes, sir.

Mr. Davidson: We offer pages 384 and 385 on which appears the transcript of the order of June 17, 1913, of the County Court of Okfuskee County approving the deed June 17, 1913.

The Court: Is that a transcript of the original order?

Mr. Davidson: Transcript kept for that purpose.

The Court: Is that the original order?

A. No, sir. The original order has been recorded here by the clerk or his deputy in the court clerk's office and proofed—

The Court: You mean when the order is signed by the Judge, that it is recorded in that journal?

A. Yes, sir.

The Court: And that is the original journal?

A. That is the original journal.

The Court: Any objection?

Mr. Rosser: Yes, sir. We object to it because it is—this journal is not signed anywhere, by the Judge. It is not his signature. His handwriting is not on it, and object for the further reason that this order as originally entered appears to be on—the word "May" is written in by typewriter and over that is written in pencil over the typewriting the word "June," and we also object on the ground that order was not made in open court as we will show by testimony.

Mr. Lawson: And for the further reasons specified

in the written statement of objections heretofore offered and especially because there is no law either state or federal for the recordation of any such approval as that and in section 5099—

The Court: I overrule all that. You have all those grounds in and I overrule that.

Mr. Lawson: We except.

The Court: It provides these orders shall be approved by the County Court and provides the state procedure shall govern that.

Mr. Rosser: The change I call your attention to is on the bottom of the second page.

The Court: Do you know whose handwriting that is—step up here.

A. No, sir, I don't. I looked at that this morning.

The Court: Do you know whose handwriting that is?

A. No, sir, I don't.

The Court: I believe I will not rule on this record now. I will wait and see.

Q. Have you got the original order, Mr. Jones, in your possession as clerk? A. I don't think I have.

Q. Did you ever make a search? A. My deputy did.

Q. You did not find the original order? A. No, sir.

Witness dismissed.

Mr. Davidson: We now offer plaintiff's exhibit 6, another stipulation signed by counsel which admits the execution and recording of the various deeds from B. O. Sims the other main conveyances down to R. S. Litchfield and other grantors, W. A. Kunkel, et al.

Mr. Stewart: We want to make the same objections as heretofore assigned. We admit the execution but object as not being competent. Don't prove his title.

The Court: Overruled.

Mr. Stewart: Just for the same reasons—

The Court: No, I am not going to let you put all that in there. I will make you state them. You say that does not show the title and not proper predicate laid. I overrule that and you may have an exception.

Mr. Stewart: We except.

Mr. Davidson: We offer in evidence exhibit 7, being a quit-claim deed dated June 17, 1913, from B. O. Sims and wife to R. S. Litchfield, covering this land.

The Court: Admitted.

Mr. Davidson: We offer in evidence exhibit of *plaintiff* number 8, special warranty deed executed on May 6, 1914, by R. S. Litchfield and other grantors to the plaintiff W. A. Kunkel, covering this land, the same being the original deed.

The Court: What is the consideration recited in that deed?

Mr. Davidson: One dollar and other good and valuable consideration.

Mr. Lawson: Want to interpose the same objection to that and further object to the introduction of that as to being an innocent purchaser in this case on the ground and for the reason the plaintiff in this case and likewise Prairie Oil & Gas Company had notice of the rights and interest of these defendants as charged in the cross-complaint and not denied by said plaintiff or said Prairie Oil & Gas Company, and second, that the plaintiff and his grantors have never had anything but an equitable title to said lands; that the naked title of the same is now and has always been since March 27, 1909, in the defendant, Hannah Canard Barnett under and by reason of section 5 of Act of Congress approved April 26, 1906, and therefore said plaintiff and said Prairie Oil & Gas Company could not be innocent and bona fide purchasers as claimed by them in their answer and bill filed in this case.

The Court: Overruled.

Mr. Lawson: Give us an exception.

Mr. Davidson: We now offer as plaintiff's exhibit 9, general warranty deed executed May 12, 1914, from R. S. Litchfield and other grantors to W. A. Kunkel, covering this land, the same being certified copy.

The Court: Who is that from?

Mr. Davidson: This is from Litchfield and others—the then owners of the property.

Mr. Lawson: Just a repetition, except this is a general warranty and the other a special. We object, same objection.

The Court: Very well, objection is overruled.

Mr. Lawson: Give us an exception.

Mr. Davidson: While this is a little out of order—only one document, the lease executed by plaintiff to the Prairie Oil & Gas Company, we might offer it at this time.

Mr. Lawson: No objection.

The Court: Very well.

Mr. Davidson: We offer in evidence Prairie Oil & Gas Company's exhibit 1, the original oil and gas lease dated May 12, 1914, by W. A. Kunkel to the Prairie Oil & Gas Company.

Mr. Lawson: The defendants interpose the same objection.

The Court: Overruled.

Mr. Lawson: Give us an exception.

Mr. Davidson: We rest.

The Court: Proceed with the defense.

Mr. Rosser: I want to ask Mr. Jones one more question. Is Mr. Jones present?

Mr. Jones: Yes, sir.

Whereupon Mr. M. C. JONES was recalled to the witness stand for further cross examination.

Further Cross Examination of Mr. M. C. Jones by Mr. Rosser.

Q. Mr. Jones, do you know C. C. Eskridge? A. Yes, sir.

Q. Did you know what his position was and how he was employed November, 1917? A. Yes, sir.

Q. What was he doing?

A. Deputy Court Clerk, Okfuskee County.

Q. Under who? A. Under me.

Q. Does he still occupy that position? A. No, sir.

Q. But he was during the month of November, 1917?

A. Yes, sir.

Mr. Rosser: That is all.

Witness dismissed.

Mr. Lawson: If the court please, we have the sheriff of Hughes County summoned here as a witness and he was also summoned in the court there today and we have some other witnesses summoned from there that are witnesses there—

Mr. Davidson: We have no objection to you using them out of order.

Mr. Lawson: And they have kindly agreed these may be used out of order.

The Court: Very well, call them.

Whereupon Mr. C. C. STANDFORD, a witness on behalf of the defendants, having been first duly sworn according to

law, was called to the witness stand and testified as follows, to-wit:

Direct Examination of Mr. C. C. Standford by Mr. Rosser.

Q. State your name? A. C. C. Standford.

Q. Where do you live? A. Holdenville.

Q. Are you acquainted with Hannah Canard Barnett?

A. Yes, sir.

Q. Do you know anything about the circumstances of this woman employing Mr. Crump to recover the land in controversy for her? A. Yes, I know something about it.

Q. What were the circumstances that caused him to be employed, if you know?

Mr. Davidson: Caused who to be employed?

Mr. Rosser: Crump.

A. Want me to make a statement?

Q. Yes; want you to tell the court the transaction.

Mr. Davidson: Know that of your own knowledge?

A. Yes, sir. Mr. Ross Bailey came to me one day and told me he knew of an oil lease—

Mr. Davidson: I object.

The Court: After you had talked with Bailey did you have a talk with Crump?

A. Yes, sir.

The Court: Just state that.

A. We employed Mr. Crump to recover or get an oil and gas lease from Miss Hannah Canard—

The Court: Who employed him?

A. Well, I did, with some others. I transacted—

Mr. Rosser: The purpose is this, to show the consideration Mr. Crump received from the settlement—trying to get to that—

Mr. Davidson: I don't think it would be a material circumstance.

The Court: Go ahead.

Q. Do you know whether he was employed?

A. Yes, he was.

Q. And you were not present yourself during all the transactions between him and the woman, or were you?

A. Not all of them. I was a part of the time.

Q. Were you present in Weleetka a short time before—do you know whether Crump brought a suit in the state court to recover the land?

A. No, sir, I don't. I understood he did.

The Court: You say yourself and others employed Crump to procure an oil and gas lease?

A. For us.

The Court: For you and your associates from this Indian woman?

A. Yes, sir.

Q. And do you know whether an oil and gas lease was taken? A. I hardly think so. Not to my knowledge.

Q. Do you know whether an oil and gas lease was taken to Crump? A. No, sir, I really don't know.

Q. Well, were you present in Weleetka sometime after Crump was employed when there was a talk between him and Hannah Canard Barnett about a settlement of this matter?

A. Yes, sir.

Q. Do you know what statements were made by Crump to her at that time? A. No, sir, I do not.

Q. Don't know? A. No, sir, did not hear the statements.

Q. Was the settlement subsequently made between Crump and the Barnett woman and Litchfield, to your knowledge?

A. Just by hearsay.

Q. You don't know anything of that except what somebody told you? A. Yes, sir.

Q. In the agreement between you and Crump and others when he was employed, was there any agreement made as to how the amount received for this property should be divided between you?

Mr. Davidson: What property?

Q. The land and lease, whatever they got out of it.

Mr. Davidson: I object to that as being incompetent, irrelevant and immaterial. That does not tend to prove any allegation of the cross bill.

Mr. Rosser: Leading up to the consideration that Crump received.

The Court: It might throw some light on it.

Q. Do you know how much was received by Crump at the time he settled this controversy with Litchfield?

Mr. Davidson: From whom?

Mr. Rosser: From Litchfield and the people interested in getting the settlement.

A. Yes, sir.

Q. How much did he receive?

Mr. Davidson: Do you know that of your own knowledge?

A. I know it in this way—Mr. Crump closed up the deal

with Mr. Litchfield outside of the state. My understanding it was in St. Louis.

Mr. Davidson: You don't know that of your own knowledge?

A. I will lead on down and tell you what I do know—Mr. Skinner came to me—Mr. Crump's partner—

Mr. Davidson: I don't care what he told you.

Mr. Rosser: Skinner was Crump's partner in the suit.

Mr. Davidson: Your knowledge, what you purport to know is what somebody told you?

The Court: Did Crump tell you?

A. Yes, sir.

The Court: Did you see him with anything—

A. No, sir.

Q. What was the arrangement as to how the money should be divided?

Mr. Davidson: I am objecting to that and trying to see whether he knows it of his own knowledge.

Q. Do you know whether there was an agreement between you and Crump and others as to how the proceeds of this settlement should be divided?

A. No, sir, the settlement was made on a different proposition from the way it started. We employed Crump for a cash consideration.

Mr. Davidson: To get the lease?

A. Yes, sir.

Mr. Davidson: But you did not get it?

A. No, sir. We got the settlement.

Q. You got a settlement—how was that to be divided?

The Court: Who got the settlement?

A. Mr. Crump, through Mr. Skinner.

Q. What was the relation between Crump and Skinner?

A. They were partners.

The Court: Did you employ his firm, or Crump?

A. I presume his firm, but made the deal with Crump individually. I presume it was the firm. Skinner's name was not mentioned.

Q. Who were associated in this deal besides you and Crump?

A. Bailey and Frank Welch, Sam and Jim Turner and myself—five of us. Five exclusive of Crump. Crump declared himself in after the deal was started.

Q. After this purported settlement was made, did you receive any money as your part of that settlement?

A. Yes, sir.

Mr. Davidson: I object as being incompetent, irrelevant, and immaterial and not tending to prove any allegation—

Mr. Rosser: We charge Crump got five thousand dollars.

The Court: Just a minute—I will see—

Q. Who did you receive the money from?

A. J. A. Skinner.

Q. And he and Crump were partners at that time?

A. Yes, sir.

Q. How much money did you receive?

Mr. Davidson: I object.

The Court: Overruled.

Mr. Davidson: I except.

A. I received one-sixth of the five thousand.

Q. How much was it? A. Figured \$833.66.

Q. That what you received? A. Yes, sir.

Q. Do you know whether these other men associated with you received any money?

A. Yes, sir, I know Mr. Welch and Bailey and two Turners did.

Q. Who did they receive theirs from? A. Mr. Skinner.

The Court: The law partner of Crump?

A. Yes, sir.

Q. How much did they receive? A. Same amount I did.

Q. The five of you received five-sixths of five thousand dollars? A. Yes, sir.

The Court: How much—how did you pay them for their legal services?

A. That was the point. I told you he declared himself instead of coming back and signing up the deal to us he sent me back to Skinner.

Mr. Davidson: How do you know that? Do you know that except what Skinner told you?

A. Skinner told me.

The Court: That is stricken. I will not admit what you received from the law partner or Skinner of the proceeds to that transaction.

Mr. Davidson: We are objecting to the conclusion of what the witness said. No proof that it was the profits.

Q. Did Skinner owe you any money at that time?

A. No, sir.

Q. Did Crump owe you any money? A. No, sir.

Q. Do you know of any other transaction out of which they might have paid you than that?

A. Could not have been; had no other dealings with them.

Mr. Rosser: I am going to ask this question—I believe it is competent—

Q. Did Mr. Skinner at that time tell you where this money was from, what it was for?

A. Yes, sir.

Mr. Davidson: We object. That would be hearsay.

Mr. Rosser: Skinner was in the suit along with Crump.

The Court: You employed Crump as attorney to represent you?

A. Yes, sir.

The Court: And his law firm was Crump and Skinner?

A. Yes, sir.

The Court: And this man, Skinner, was the Skinner of that law firm?

A. Yes, he was the Skinner.

Q. What did Skinner tell you this money was paid you for?

Mr. Davidson: I object and except to the ruling of the court.

The Court: Very well.

A. Settlement with Litchfield.

Q. Settlement how? What did he say the money was paid for?

Mr. Davidson: Same objection.

The Court: Very well, overruled.

Mr. Davidson: Exceptions.

A. The settlement was for our relinquishing our rights to this piece of property back to Litchfield. When I say Litchfield, might have been the company which Litchfield represented—but anyhow, Litchfield and his associates.

Q. I see—just a moment—you said something about paying Mr. Crump cash. Did you pay him a cash fee?

A. No, sir.

Q. Did you agree to in the beginning? A. Yes, sir.

Q. But afterwards he declared himself in?

A. He never came around to get the cash fee

Cross Examination of Mr. C. C. Standford by Mr. Davidson.

Q. And you never paid him his cash fee? A. No, sir.

Q. And his compensation was one-sixth?

A. So Mr. Crump told me—Crump kept one-sixth of the five thousand.

Q. Your employment of Crump was to get a lease, oil and gas lease on this land? A. Yes, sir.

Q. And you say he did not get it?

A. Not to my knowledge. He got something, but I understood—

Q. You did not know what he got? A. No, sir.

Q. What was the settlement about?

A. The settlement was for whatever he got—attorney's contract.

Q. Do you know what he got?

A. I understood he got an attorney's contract.

Q. Did you ever see it? A. No, sir.

Q. How did you come to acquire any interest in this land?

A. Through this deal I was telling you about.

Q. But Crump never got the lease?

A. Well, I don't know what he got.

Q. What did you get the six hundred and sixty-six dollars for? A. Well, I—

Q. What did you ever give for it?

A. What did I give for it?

Q. Yes.

A. Did not give anything except expense money I had been out.

Q. Expense money to whom? A. Crump.

Q. For what?

A. For getting, trying to get this oil and gas lease.

Q. How much did you pay?

A. I do not remember just the amount.

Q. A few dollars? A. Yes, sir, not very much.

Q. So you took this six hundred and sixty-six dollars from Skinner—Skinner tell you that it was in settlement of something that you did not know anything about?

A. Of this contract, whatever he got at Okemah.

Mr. Rosser: You said eight hundred and thirty-three?

A. Eight hundred and thirty-three.

Q. Never saw the contract and don't know what it was?

A. No, sir.

Q. And as far as you know never acquired any interest in this land? A. Nothing except through Crump.

Q. Did not get anything through Crump?

A. Got this money.

Q. Except the money? A. Yes, sir.

Q. All you know is a bunch of you fellows went down there and collected eight hundred and thirty-three dollars apiece for nothing?

A. Did not say that. Had some mental anguish and other things put into it.

By Mr. Rosser:

Q. You say you furnished some expense money, and did you have to do anything to get Crump and this Indian together?

A. No, sir, after we employed Crump, he handled the deal.

By Mr. Davidson:

Q. What deal? A. The deal with Hannah Canard.

Q. For you? A. Yes, sir.

Q. But did not do it?

A. No, sir, he did not so far as getting it in my name.

Witness dismissed.

Whereupon Mr. SAM TURNER, a witness on behalf of the defendants, being first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

Direct Examination of Mr. Sam Turner by Mr. Lawson.

Q. State your name and age. A. Sam Turner, 49.

Q. Where do you live? A. Holdenville.

Q. What official position do you hold?

A. Sheriff of Hughes County.

Q. Do you know Carl Standford? A. Yes, sir.

Q. Did you and Carl Standford ever have any transaction with George C. Crump respecting the allotment of Methaley Watson, involved in this suit? A. Yes, sir.

Q. State what it was.

A. Mr. Standford was to get a lease,—my understanding was to get a lease from Watson and employed Crump to do it.

Q. Did you get the lease?

A. No, sir, not that I know of.

Q. What did you do?

A. Got that contract, my understanding.

Q. In his own name? A. Yes, sir.

Q. Did he bring suit afterwards on that contract?

A. I don't know.

Q. What did you understand about it? A. He did.

Mr. Davidson: I object to what he understood.

Q. State if you know what became of the suit?

A. My understanding is he compromised it.

- Q. How did you get that understanding? A. He said so.
 Q. He told you so? A. Yes, sir.
 Q. How much did he say he got?
 A. Five thousand dollars.
 Q. Who did he say paid it to him? A. Who? Him?
 Q. Yes? A. I do not remember the man's name.
 Q. Would you know it if I mentioned it?
 A. No, sir, I don't believe I would.
 Q. Did it come from any of the defendants in the suit?
 A. Sir?
 Q. Did it come from any of the defendants in the suit?
 A. I don't know anything about it.
 Q. What did he do with the five thousand?

Mr. Davidson: Who?

- Q. Crump.
 A. I don't know what he did with it. Mr. Skinner paid us boys,—his partner.
 Q. Do you know how Skinner got hold of it? A. No, sir.
 Q. How much did you get?
 A. Eight hundred and thirty-three dollars.
 Q. You were one of the six boys that entered into the contract with Crump? A. Yes, sir.
 Q. And he brought the suit and reported to you he got five thousand in settling it up and gave you part? A. Yes, sir.

Cross Examination of Mr. Sam Turner by Mr. Davidson.

- Q. Did you employ Crump?
 A. No, sir, Mr. Standford.
 Q. You don't know anything about it?
 A. Nothing except Standford told me.
 Q. Do you know what agreement he made with Crump?
 A. He told me he was to give two hundred dollars to get the lease.
 Q. Did you contribute any of that two hundred dollars?
 A. I would have.
 Q. Did you? A. Would have.
 Q. But did you? A. No, sir.
 Q. Never paid out a penny?
 A. Nothing except some expense money.

The Court: Did you agree to?

- A. Yes, sir.
 Q. One-sixth of the two hundred dollars to be paid to Crump for getting the lease? A. Yes, sir.
 Q. Never got the lease? A. No, sir.
 Q. And never paid the fee? A. No, sir.
 Q. And yet collected eight hundred and thirty-three dollars for nothing?

A. I don't think it was for nothing.

Q. What were you out for?

A. I was out some expense money all I was out.

Q. You don't know what kind of a settlement was made?

Q. No, sir, only what Crump said.

Q. He said he compromised the suit?

A. Got five thousand dollars.

Q. And had five thousand to distribute? A. Yes, sir.

Q. Crump told you that? A. Yes, sir.

Q. Did not say how he got it from or where he got it?

A. He said they settled the case, compromised.

Q. Do you know what the case was about?

A. We were trying to get a deed or the lease and employed him to do it.

Q. A deed?

A. A lease, and he went over and got an attorney's contract he told me.

Q. I understand you to say Crump told you where he got the money? A. No, sir.

Q. Did not say anything about that? A. No, sir.

Q. And that is the last conversation you had with Crump?

A. Yes, sir.

Q. And you settled the matter with Skinner?

A. Mr. Skinner called the boys in and gave each their part of the money.

Q. And you assumed it was part of the five thousand?

A. Yes, sir.

Q. Skinner did not say that?

A. Said it was money Crump sent back to pay us boys off.

Q. Were you over there with anybody?

A. I was there with part of the boys.

Q. And they got it the same time you got yours?

A. Yes, sir, all got it the same day, divided it up.

The Court: Who gave the oil lease in controversy here?

Mr. Rosser: The defendant, Hannah Canard Barnett.

The Court: She gave an oil lease?

Mr. Rosser: She gave it to Crump.

The Court: Was it assigned, the oil lease?

Mr. Rosser: The Prairie Oil & Gas Company is claiming under a lease given them,—another oil and gas lease from Litefield.

The Court: Their lease, their oil lease might be valid and yet the title to the land might not be in Crump.

Mr. Rosser: There is a possibility of that.

The Court: Then the question in that event would be who was entitled to the royalties.

Mr. Rosser: This evidence is simply to show—

The Court: I understand. Just wanted to get the angle. Of course if they are holding under an original oil lease from Crump and that was fraudulent and taken with notice—but if afterwards the record was clear and title shown to be in that party and they had taken an oil lease and had invested and developed it—they would have a good lease, would they not?

Mr. Rosser: Yes, sir.

Mr. Lawson: Crump took an oil lease and afterwards turned the oil lease over to Litchfield and it was a matter of record—

The Court: I understand the Prairie is not claiming under that lease?

Mr. Davidson: Nobody on our side is claiming under that lease.

Mr. Lawson: There is a second judgment gotten by hook or crook and they refuse to claim under that. We will get to it after a while.

The Court: We will see about it later.

Witness dismissed.

Whereupon Mr. WILLIE SMITH, a witness on behalf of the defendants, being first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

Direct Examination of Willie Smith by Mr. Lawson:

Q. State your name and age? A. William A. Smith.

Q. Where do you live? A. Holdenville.

Q. What county is that? A. Hughes County.

Q. What is your business? A. Dry goods.

Q. Are you acquainted with Hannah Canard Barnett and Tucker Barnett? A. No, sir.

Q. Did you have any dealings with Carl Standford, Sam Turner and George C. Crump in any way connected with the allotment of Mehaley Watson, involved in this case?

A. Yes, sir.

Q. And if so, please state to the Court as short as possible just what that was.

A. Standford and I and the others had been interested in getting an oil lease ourselves and so we got—Standford got word would be a good chance to get an oil lease from this

Canard and he went and employed George Crump to help him get the oil lease.

Q. Billie, how many were you in that deal at first place, how many?

A. With us there was J. B. Turner, Sam Turner, Carl Standford, Ralph Welch.

Q. Bailey and Crump? A. That is all that had any—

Q. Ross Bailey? A. Yes, sir.

Q. George C. Crump? A. Yes, sir.

Q. Six of you? A. Yes, sir, six of us.

Q. Now then, do you know anything about Crump getting an attorney's contract from Hannah Canard Barnett to recover that land for her?

A. Well, I don't know no more than—

Q. Just hearsay? A. Yes, sir.

Q. You know whether he afterwards brought a suit for her to recover this land?

A. Well, he said he did but I don't know.

Q. Do you know what become of the suit? A. No, sir.

Q. Do you know? A. Claimed it was settled.

Q. Anything ever paid to you to settle that suit or otherwise in which you had an interest or got an interest, and if so, state what it was?

A. I got--let's see, five hundred and fifty dollars I think.

Q. How did you happen to get less than the other boys in that settlement?

A. When they went up to settle with Skinner I was not considered in it and later on the other boys—Ross Bailey and he claimed that I was not considered in it and later on the four boys chipped in.

Q. Where did that money come from you received, who gave it to you? A. Carl Standford gave me a check for mine.

Q. Do you know where the money that Standford and Bailey got came from?

A. They claimed Skinner gave it to them.

Q. Were you there the day they got around the table and divided it up? A. No, sir, I was not there.

Q. Carl was up there? Yes, sir.

Q. Did you have any conversation with Crump about that business? A. No, sir.

Q. Do you know how Crump got the money to Mr. Skinner?

A. No, sir, Skinner said he got the money by mail.

Q. And Skinner was transacting that business for Crump? A. Yes, sir.

Q. How much did he say he got?

A. Five thousand dollars.

Cross Examination of Mr. Willie Smith by Mr. Davidson:

Q. Did you ever agree to pay Crump anything?

A. No, sir, Standford said he agreed to pay him two hundred dollars.

Q. Did you ever agree to pay him anything? A. No, sir.

Q. Did you ever agree to pay Crump anything for the lease he was to get?

A. Not any particular price. Gave him instructions to get the lease.

Q. And you never paid out any money? A. No, sir.

Q. And never agreed to pay anything?

A. I was out some expense money.

Q. What kind of expense?

A. Expenses in going up to Weleetka or wherever they went to get the lease.

By Mr. Lawson.

Q. Where is J. Ross Bailey who had acquired an interest with the others in that transaction? A. He is dead.

Q. Do you know where R. P. Welch is?

A. He was at Holdenville.

Q. He was subpoenaed in this case. Do you know whether he came? A. No, sir, I don't know.

Witness dismissed.

Mr. Lawson: Now your Honor, those witnesses want to go home—

The Court: Any objection to their being excused?

Mr. Davidson: No, sir.

The Court: They may be excused.

Mr. Rosser: Now your Honor, I don't know whether you want me to call the witnesses but we want to prove the fact the County Court was not in session at the time this purported order in June, 1913, was made approving this deed.

The Court: Is not the County Court always in session?

Mr. Rosser: What I want to prove is that the County Judge was not in the County Court House at or about that time and did not make the order in his court room or chambers.

The Court: Where is the County Judge?

Mr. Rosser: He is dead. We have the Clerk of the County Court at that time. We will put him on the stand if you prefer.

The Court: Very well. You may introduce him.

Mr. Davidson: We object to the offer. Might just as well settle it. We object as being incompetent, irrelevant and immaterial. The Circuit Court of Appeals—

The Court: I will let them put it in the record.

Mr. Davidson: He makes the offer—that is sufficient.

The Court: I know. They may be offering to show it was not made at all.

Mr. Davidson: That is not the offer.

Mr. Rosser: Call Mr. Dosey.

Whereupon Mr. MAT DOSEY, a witness on behalf of the defendants, being first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

Direct Examination of Mr. Mat Dosey by Mr. Rosser:

Q. State your name. A. Mat Dosey.

Q. Where do you live? A. Okemah, Okfuskee County.

Q. Were you living there in June, 1913? A. Yes, sir.

Q. Did you hold any official position in Okfuskee County in Oklahoma in 1913, during that year? A. Yes, sir.

Q. What official position did you hold at that time?

A. Clerk of County Court.

Q. Who was the County Judge of Okfuskee County during the year 1913, if you know?

A. W. P. Smith went in the first part of the year.

The Court: Went in January, 1913?

A. Yes, sir.

The Court: When did he die?

A. July, I think.

The Court: Of that year?

A. Yes, sir.

Q. Do you know whether he was holding court in Okfuskee County in June, 1913, during the month of June, did he hold court?

Mr. Davidson: I object as being incompetent, irrelevant and immaterial.

The Court: I think it is immaterial under our statute. Is not the probate court always open?

Mr. Rosser: Yes, sir. I will follow it with another question, but I want to prove court was not in session.

The Court: I will let you prove it just as a predicate to show that he did not hold a regular term of court.

Mr. Rosser: We offer it also as substantive evidence

for the purpose of showing this deed could not have been approved because court was not in session.

The Court: I will hold that the probate court or County Court could approve this deed—

Mr. Rosser: With that understanding may I ask him these questions?

The Court: Very well.

Mr. Davidson: Subject to our exceptions.

Mr. Rosser: The Court has already announced his ruling.

Q. Was there a session of the County Court opened in Okfuskee County in June, 1913?

The Court: You mean session of the court when they had a jury?

Mr. Rosser: Or had civil or jury cases as distinguished from the probate court?

A. The regular term of court was open, I think in April.

Q. Did the Judge sit on the bench for the purpose of trying cases during the month of June, 1913? A. No, sir.

Q. Was Judge Smith present at the court house in Okemah in Okfuskee County on the 17th day of June, 1913?

The Court: Do you know that as an independent fact?

A. Yes, I know he was not.

The Court: Do you know where he was?

A. He was at home.

Q. Do you know that of your own knowledge?

A. Yes, sir.

The Court: At home there in—

A. Okemah.

Q. At his residence? A. Yes, sir.

Q. Was he in his chambers in the court house on that day? A. No, sir, he was not.

Q. Not in the court house? A. No, sir.

Q. Was he in the Clerk's office that day? A. No, sir.

The Court: Do you know whether the Clerk went down to his residence that day?

Mr. Rosser: He is the Clerk.

A. I did not go down there that day.

The Court: Did you ever see this entry here in the journal, 1913?

A. Yes, sir.

The Court: That your handwriting?

A. The journal there? I do not remember—I have not seen it recently.

The Court: Did you enter this—show him that.

Mr. Rosser: Shall I get through?

The Court: No, I am asking him that myself. Show it to him.

A. That is my handwriting.

Q. How come you to make that entry, page 390?

A. I made it in all approval cases, when there is an approval case filed—

The Court: Do you remember making it?

A. I do not remember—

The Court: That is dated June 17th?

A. Yes, sir.

The Court: How do you know the County Judge was not in county court room and at his residence and do not remember making the entry?

A. I know I made the entry on the day it was made and I know Judge Smith was not in the court room after the latter part of May, was not able to be up there.

The Court: How come you to make it?

A. Because the papers were brought in and filed.

The Court: On that day?

A. Yes, sir.

The Court: Do you remember who brought them in there?

A. I do not remember who brought them there. I do not remember whether Mr. Patterson or Wallace—perhaps both together.

The Court: Show him this and ask him if he made this record.

Mr. Davidson: Now the record you just referred to which was in your handwriting is Land—

A. Land Approval Fee Record.

Mr. Davidson: No. 1. Now look at this other record and state what that is.

A. That is a record for approval of Indian lands.

Mr. Davidson: Well, look at pages 384 and 385, did you make that entry?

A. My deputy made it.

Mr. Rosser: We interpose the same objection that we did to Mr. Jones' and this other.

The Court: It is not being offered yet. Was it made by your deputy under your supervision?

A. Yes, sir.

The Court: Was that a correct record of it?

A. Yes, sir.

The Court: You saw the original, it was brought in and bore the approval and that is a copy?

A. Yes, sir, this has been proof read and an exact copy.

Mr. Rosser: We want to interpose the objection and let the Court rule on it and save an exception. I understand the Court is taking all this testimony tentatively.

The Court: Yes, I am going to let all this evidence in the record. This is a chancery case, but I am going to follow the decision of the Circuit Court of Appeals. I am not going to let this record go up on objections.

Q. You say, you stated that Mr. Wallace or Mr. Patterson brought it there? A. I think they did.

Q. What is your best recollection about that?

A. I feel pretty sure that Mr. Patterson brought it although Mr. Wallace could have brought it.

Q. Did Judge Smith hand it to you? A. No, sir.

Q. Sure of that? A. No, sir.

Q. Was the order made by Judge Smith in your presence?

A. No, sir.

A. Who is Mr. Patterson? A. Attorney at Okemah.

The Court: You knew his signature?

A. Yes, sir.

The Court: Did the order bear his signature?

A. Yes, sir, and the seal of the Court.

The Court: Seal of the Court when brought to you?

A. Yes, sir.

Q. You say Mr. Patterson is an attorney—do you know who he represented in that transaction?

A. I presume he was representing the people that was getting the land, Mr. Sims.

Q. Who is Mr. Wallace?

A. He is an oil man, all I know.

Q. Were he and Mr. Patterson together that day?

A. Yes sir, came to the court house before they went down to Judge Smith's house.

Q. Talk to you before they went to Judge Smith's house?

A. Yes, sir.

Q. Then came back?

A. Yes, sir, I think called up over the phone to see whether he could take the approval.

Q. I call your attention to this order which appears at pages 384 and 385 of the—you told us what that was—

A. Book 2, Orders of Land Approvals.

Q. I call your attention to the fact that the word "May" at the end of the order is written in typewriting, and that over that is written the word "June." Now you say you compared that? A. Yes, sir.

Q. Now in order not to mislead you I hand you a certified copy of that order and then I ask you which is correct, whether it should be May or June?

A. Well, I can't say because that is written in pencil. I can tell you our custom at that time, when this was recorded, it was later proof read and if there were any errors like that appears, it was written over with a soft pencil with the understanding the stenographer when we took this book to pieces and put it back in the machine and erase that and correct it.

The Court: But in making a certified copy, the person making it could have followed—

Mr. Rosser: That is true. I understand.

The Court: Could have followed the typewritten word and not the pencil—might have thought it his duty to certify it as it was put in there.

Mr. Rosser: Yes, but I am just calling his attention and after examination he can give us his best judgment.

Q. After an examination of all these papers what do you say as to when the word June was written in there?

A. I judge it was written within ten days after that order was spread on record.

Q. That is your judgment? A. Yes, sir.

Q. Do you know what has become of the original order which you say the Judge signed and you saw his signature?

A. No, sir.

Q. Have you ever made search for that order?

A. Yes, sir, made a search for it last week.

Q. Did you make a search for it prior to last week?

A. If I did, I do not recall.

Q. Do you remember searching for it about the time this case was tried before?

A. No, sir, I do not recall it was necessary at that time.

Q. Did you enter this order as soon or immediately after it was brought to you? A. Yes, sir.

Q. And before you saw the Judge again?

A. I don't know. I was in the Judge's house every night

but did not talk to him on business matters except what he would ask me because he was a sick man.

Q. Do you remember anything about it?

A. I do not remember whether this case was ever mentioned to me by him or not.

Q. Judge Smith never recovered from this illness he was suffering from? A. No, sir.

Q. Never opened court again? A. No, sir.

Q. Never sat in court to transact business?

A. No, sir, never was in the court house after the latter part of May.

Mr. Rosser: Now, your Honor, we offer all this testimony.

The Court: All right, I will admit it and admit the record too. You offer it in evidence and it may be considered in evidence.

Cross Examination of Mr. Dosey by Mr. Davidson:

Q. This search you made last week was made on the request of Mr. J. B. Patterson? A. Yes, sir.

Q. Referring to this entry on the Land Approval Fee record number 1, on page 391, did you say that entry was made the day the papers were brought to you?

A. Yes, sir, made that day.

The Court: He testified to that.

Q. And that paper bore the Judge's signature?

A. Yes, sir.

Witness dismissed.

Mr. Rosser: We expect to follow this witness with another witness that is a long witness and we have to secure an interpreter--tried to get one to come up here but did not succeed.

The Court: Very well, court will take a recess until one-thirty P. M.

Whereupon Court took a recess until one-thirty P. M.

Afternoon Session.

Whereupon Court having been convened in due form of law and counsel for the plaintiff and the defendants announcing to the court that they were ready to proceed with the further trial of this cause, the following proceedings were had to-wit:

Mr. Rosser: The defendants now hand the stenographer defendants' exhibit 1, which is a certified copy of the application for approval of this deed purported to be made in the County Court of Okfuskee County. The gentlemen on the other side are familiar with it because they furnished it to me.

The Court: It is admitted.

Mr. Rosser: In this connection, I hand the stenographer defendants' exhibit 2, which is one of the exhibits to the petition in this case, being a certified copy of the assignment from George C. Crump to R. S. Litchfield of the lease executed to him by the defendant and we offer it in evidence. Any objection?

Mr. Veasey: No, sir.

The Court: It is admitted.

Mr. Rosser: Next I will call Mr. Stewart.

Whereupon Mr. FRANCIS STEWART, one of counsel for defendants, being first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

Direct Examination of Mr. Francis Stewart by Mr. Rosser:

Q. State your name? A. Francis Stewart.

Q. You are one of the attorneys for the defendant in this action? A. Yes, sir.

Q. Have you at any time since your employment been to the records of the County Court of Okfuskee County for the purpose of examining them in your preparation of this case?

A. Yes, sir.

Q. When were you there?

A. It was just before the first trial of this case which was December, 1917, if I remember rightly.

Q. Did you at that time examine the purported record of the approval or alleged approval from Hannah Canard to B. O. Sims?

The Court: Now Judge Rosser, I don't think that is very material. Up at the top it shows June 17th. It may be this order was prepared in May and that when they went down there they made the change up at the top and that somebody since then has changed it down at the bottom with a pencil. The fact it was written "May" in there would not affect the validity of the order.

Mr. Rosser: Would not affect the validity of the order but we want to offer the proof in December 1917 this

change which appears to be made in pencil, changing the typewritten word "May" to "June" had not been made.

The Court: I will let you prove it.

Mr. Rosser: It is for the purpose of making the record on the proposition that all orders and judgments have to be done in court in this matter.

Q. The Court says you can answer. Did you examine that order just before the trial in December, 1917?

A. You are referring to that particular record here?

Q. Page 385? A. Yes, sir.

Q. I call your attention to the top of page 385 and will ask you if the record appears the same now as it did in December, 1917? A. It does not.

Q. What was the condition of the record in 1917 and what is its condition now?

A. In 1917 the last line before the signature was 17th day of May, 1913, in typewriting.

Q. The word "May" typewritten?

A. Yes, sir, with nothing else there.

Q. And what is the condition now?

A. The pencil notation over the word "May" seems to be the word "June."

Q. The word "June" written in pencil?

The Court: The word "May" is not erased but the word "June" is written over it?

A. Written right through the word "May."

Q. And you say it was not in that condition in 1917?

A. Yes, I know it was not. Examined it carefully and had a certified copy made.

Q. Have you the certified copy with you? A. Yes, sir.

The Court: That is defendants' exhibit 1?

Mr. Rosser: No, sir, I have not offered it in evidence yet. We ask the stenographer to mark this defendants' exhibit 3 and offer it in evidence. Any objection, Mr. Davidson?

The Court: There being no objection it may be admitted.

Witness dismissed.

Mr. Rosser: Come around, Hannah. We have an interpreter here, Mr. Tiger. Come around Mr. Tiger.

The Clerk: You do solemnly swear that you will truly interpret between the Court, the jury, the counsel, and the witness in this issue joined between W. A. Kun-

kel, the plaintiff, and Santa Watson, defendant, to the best of your ability. So help you God.

Mr. Rosser: I believe the witness was sworn this morning but had no interpreter. Do you waive that?

The Court: Well, she understood that. When they hold up their hands in court, they know enough.

Mr. Rosser: Yes, I think so.

Whereupon HANNAH CANARD BARNETT was called to the stand on behalf of the defendants and testified as follows, to-wit:

Direct Examination of Hannah Canard Barnett by
Mr. Rosser:

Q. State your name? A. Hannah Canard Barnett.

Q. Where do you live?

A. I live about four miles from Weleetka.

Q. How old are you? A. Thirty-eight years old.

Q. What is your husband named? A. Tucker Barnett.

Q. How long have you been married to Tucker Barnett?

A. It is about ten years.

Q. Did you have a child named Mehaley Watson?

A. Yes, sir.

Q. Is Mehaley Watson living or dead? A. She is dead.

Q. How long has Mehaley Watson been dead?

Mr. Davidson: All that is admitted, your Honor please.

Mr. Rosser: I was just leading up. I will eliminate it.

Q. What was her father named? A. Hully Canard.

Q. Living or dead? A. Dead.

Q. Die before or after Mehaley Watson died?

A. Hully Canard died first.

Q. Did Hully Canard leave an allotment also?

A. Yes, sir.

Q. Did you make a deed to B. O. Sims at any time?

A. Not to B. O. Sims, but I understood it was to one Lake Moore.

Q. Did you make that deed?

A. I don't know what year it was—it has been quite a while back.

Q. How many deeds did you make at the time of the execution of this deed which you thought was to Lake Moore?

Mr. Davidson: We object to that testimony. The only issue here is this—the execution in fact of the deed is ad-

mitted but it is alleged that she did not intend that it should cover the Mehaley Watson allotment. There is no issue here of the fact but it is a question of what she intended. We shall object to this testimony.

Mr. Rosser: We admit as a fact she did sign the instrument but I think it is material—

The Court: I will see.

Q. How many instruments—did you make more than one deed at the time you say you thought you made a deed to Lake Moore?

A. I have never signed any deed since that time but I signed one I understood to be to Lake Moore.

Mr. Davidson: We object to that and ask to have the answer stricken if the purpose is for the purpose of denying the execution of fact of deed, March 1909.

Mr. Rosser: We are not denying that.

Mr. Davidson: Therefore the testimony is immaterial.

The Court: Yes—what is the object?

Mr. Rosser: The object is simply bearing on the subsequent conduct of this party to show she did not know at that time she was deeding the land and never did at any time.

The Court: I don't think that question tends to prove that one way or the other.

Mr. Rosser: The Court exclude it?

The Court: No, I will let it in but will not find on it one way or the other—incumbering the record for nothing.

Mr. Rosser: I am not going to make a long record on the subject either.

Q. At the time of the execution of the instrument you thought was a deed to Lake Moore, what did you do about that deed, did you go before the County Court then?

A. No, sir.

Q. Did you go before the County Judge?

The Court: She did not have to the way I understand the law. I do not understand the law to require her to go before the County Court. Anybody in interest could take the deed and get it approved.

Q. Do you know whether anyone else took that deed to the County Court or the County Judge of Hughes County to get it approved?

The Court: Let me see that.

Mr. Rosser: They offered the original deed, I believe. What was her answer?

Interpreter: Did not get through.

The Court: Ask her if she went before anybody or acknowledged it before a Notary Public.

Q. Did you acknowledge this deed that you spoke of before a Notary Public at that time. A. He was a white man.

Q. You did then go before a Notary Public?

The Court: It shows it was acknowledged before C. W. Miller.

Q. Do you know this man here?

The Court: Have you seen him before?

A. I might have seen him but I don't know him.

The Court: Ask her if he is the man she went before.

Q. Did you go before him and acknowledge the deed at the time it was made?

A. I did not know who the party was that was Notary Public at that time. I don't know the man.

Q. You did acknowledge it before a Notary Public, did you? A. Yes, sir.

Q. Had you at that time ever been in possession of that land or occupy it or get rent off it?

The Court: What is the object of that?

Mr. Rosser: To show the reason why she did not bring suit sooner to get the deed cancelled, why she did not do something with it.

A. No, sir.

Q. Did you afterwards at any time make a contract with reference to this land to get it back? A. Yes, sir.

Q. Who did you make the contract with?

A. I signed the contract with one Crump, for Crump to recover the Mehaley land.

The Court: Is that contract introduced in evidence?

Mr. Rosser: It has not been but I am going to follow that up with that right now. Let me have the certified copy.

Q. Did you read the contract at the time it was made?

A. No, sir.

Q. Did anyone tell you what was in that contract?

A. Yes, sir.

Mr. Rosser: We will ask the stenographer now to mark this defendants' exhibit 4, which is a copy of the contract between Hannah Canard Barnett and George G.

Crump, dated March 27, 1913, which is attached to the original petition in this case and we offer it in evidence.

Q. Did you make a lease to Mr. Crump about that time or the same day, lease on the Mehaley Watson allotment?

A. I signed an oil and gas lease on the land to Crump.

Mr. Rosser: I now hand the stenographer a certified copy of oil and gas lease from Hannah Canard Barnett and Tucker K. Barnett to George C. Crump, dated March 27, 1913, and ask to have it marked defendants' exhibit 5, and offer it in evidence.

Mr Davidson: I suppose that is offered in connection with the contract and as a part of the contract?

Mr. Rosser: Yes, sir.

Mr. Davidson: No objections.

The Court: Very well, may be considered read.

Mr. Rosser: I now hand the stenographer a certified copy of the order of the County Court of Okfuskee County, dated March 27, 1913, approving the contract and lease which was just offered in evidence and ask the stenographer to mark it defendants' exhibit 6 and offer it in evidence.

The Court: It may be considered read as there is no objection.

Q. Do you know what Mr. Crump did after you made these contracts with him about getting Mehaley Watson's land back? A. I do not know.

Q. Did he recover the land for you, did he get it back for you? A No, sir.

The Court: This is the same land that is included in the Hughes County land?

Mr. Rosser: Yes, sir, same land. You do not object to the term "Mehaley Watson land?"

Mr. Davidson: No.

Q. Did you afterwards have any talk with Mr. Crump about this contract and lease you had made to him?

A. At the time I saw him was when he requested me to release him from the contract as my attorney.

Q. When and where was that? A. At Weleetka, but I don't know what time it was but some time after these contracts had been signed by me.

Q. What did Crump tell you at the time he asked you to release him from this contract?

A. He told me at the time there was a possible chance getting the land back to me but it required too much time and

trouble and that he could not get into it and for that reason he wanted me to release him from the contract and that he would pay me if I would release him from the contract.

Q. What did he tell you he would pay you if you would release him from the contract?

A. He told me he would pay me two thousand dollars.

Q. Did he tell you when he would pay it?

A. He did not say when he would pay me. He said however he would pay me that day but did not pay me the money.

Q. Why did he not pay you that day, do you know?

A. I do not know why it was he did not pay me that money.

Q. Did he say anything about the County Court or County Judge?

A. Why, he did not say anything about the County Judge at the time. Only said if I released him from the contract he would pay me. He said he could not do anything for me regarding the land just at that time and so I told him if he could not do anything I could not do anything and that I was looking to him to work for me and so I would release him if he wanted me to release him.

Q. Did he ever mention the County Judge or County Court in connection with that? A. Not anything.

Q. Did you go before the County Judge at any time or County Court after that? A. Yes.

Q. How many trips did you make to the County Judge or county seat to see the County Judge?

A. We made two trips to see the County Judge and upon the second trip to the County Judge's office that I received the money.

Q. When did you make the first trip with reference to the time you had the talk with Crump?

A. They took us to the County Judge the same day I had the talk with Crump.

Q. Who took you to the County Judge? A. Wallace.

Q. Did Crump go with you?

A. No, sir, he went back to Holdenville.

Q. Did you see the County Judge the first trip you made?

A. No, sir, they told me he was sick and was at home.

Q. How long was it before you went back the next time?

A. If it was not three weeks anyway it was two weeks after my first trip that I went back to see the County Judge and this time we saw the Judge.

Q. And it was this second trip that you got the two thousand dollars? A. Yes, sir.

Q. Now at that time, the time you went before the County Judge, did you sign any sort of a paper?

A. Yes, sir, I signed the paper or papers there I was told—

Mr. Davidson: We object to that. There is no issue raised on that question.

Q. Did you read what was in the paper?

Mr. Davidson: I object—

Mr. Rosser: Just a moment—I think the issue is she did not understand at the time she went before the County Judge—

Mr. Davidson: The testimony is direct to the proposition she did not in fact execute it. If the testimony—

Mr. Rosser: She already said she signed the paper.

Mr. Davidson: Now the evidence is offered for the purpose of showing she did not understand it. I don't think it can be impeached in that manner.

Mr. Rosser: I don't know how else it can be impeached.

Mr. Davidson: If a man signs a paper you cannot impeach it by simply saying he did not understand it.

Mr. Rosser: Well, just a moment—

Q. Are you a Creek Indian?

A. Yes, sir, Muskogee Creek Indian.

Q. Are you a quarter or a half-blood or full-blood or what degree of blood are you?

A. I am a full-blood Creek Indian.

Q. Do you know the English language? A. No, sir.

Q. You have been to school some, haven't you?

A. Yes, but the English language was very difficult for me to learn and I did not learn anything about it much.

Q. Can you read the English language? A. No, sir.

Q. Can you understand an ordinary conversation carried on in the English language?

A. Sometimes I can get a word I understand but not to connect it in any way to know just what is being said.

Q. How many contracts or deeds or other business deals have you made in your life besides this one we are talking about now? A. Never did.

Q. Did you read yourself the paper that you signed there at the time you went before the County Judge?

Mr. Davidson: I object.

The Court: How did she sign it?

Mr. Rosser: Signed her name as I understand.

Q. You can sign your name, can you?

A. Yes, sir, I can write my name.

The Court: Well, if a person signed an instrument and does not read it and it is not misrepresented to her and no fraud practiced on her she is bound by it.

Mr. Davidson: The only allegation is she did not understand it. It is not competent to show that.

Mr. Rosser: Well, let's see what the allegation is—it is alleged she did not understand and we are now undertaking to show it was misrepresented to her as to what it contained.

Mr. Davidson: I don't think that is the—

Mr. Rosser: Well, I will see—give me the petition.

Whereupon Mr. Rosser, counse] for defendants read the allegations in the petition to the Court and the same was argued to the Court.

The Court: I will let her answer the question.

Mr. Davidson: We except.

The Court: Go ahead.

Q. What was said to you at the time you made the application or at the time you appeared before Smith, as to what was being done there?

A. Why I was told this money was being paid to me in consideration of the releasing of my attorney from his contract.

Q. What was told you about the deed and what was said to you about the Sims deed?

The Court: Well, she had already signed the Sims deed.

Mr. Rosser: Yes, sir, just wanted to avoid later on—

The Court: When there was an approval before the County Judge—when it was approved by the County Court under the decision of the Eighth Circuit Court of Appeals that carried the title. She did not have to appear.

Mr. Rosser: Yes, sir, but our contention is she had a right to know what was going on and object if it was misrepresented.

The Court: That would only apply as to the settlement of that law suit, but if this deed, when it was approved to Sims, when it was approved in Okfuskee County that vested the title.

Mr. Rosser: There was a suit pending by her at the time to cancel these deeds and it is our contention if this proceeding was misrepresented to her and she did

not understand it and was prevented thereby from objecting to the application that she has been defrauded.

The Court: I don't think you can get it in here. I will let you put it in the record though.

Mr. Rosser: I understand your Honor's position. You let us introduce it in evidence but not consider it.

The Court: You would be worse off than ever then.

Mr. Rosser: I understand but we are willing to stand on the record.

Q. Anything said to you about the Sims deed at that time? A. No, sir.

Q. Did anyone tell you they were asking to have the Court approve the deed you had made to Sims four years before that? A. No, sir.

Q. Did you know at that time that Mr. Crump was being paid by Mr. Litchfield or anyone else to withdraw from this case? A. No, sir.

The Court: That is the gist of fraud in the case but it looks to me like you are cut off on the ground of them being an innocent purchaser. If he was her attorney and Litchfield paid him some money and by that means he withdrew, that would be fraud, and be the means for setting everything aside but when these other people came in and the record is made and they bought, they would be innocent purchasers.

Mr. Rosser: But the burden is on them to show they are not innocent purchasers and I don't know what your Honor's view is, but I must confess from your Honor's position, you will probably be against us but it is our position that all of these instruments being of record showing Crump's employment and that he took a lease and assigned it over to Litchfield and the statement of compromise, and Litchfield took this lease—

The Court: He might be acting as her agent. I would think when I see that, in taking the lease he was acting as her agent. Of course the Court would set that all aside and hold him as a trustee but when a person comes along and sees this record complete and all these transfers—you are not presumed to think there was fraud but fair on the face. Proceed.

Q. Did you know Mr. Litchfield or anybody else had paid Mr. Crump five thousand dollars or any other sum to get him to have these suits dismissed?

Mr. Davidson: No such evidence.

Mr. Rosser: I will change the form of the—

The Court: Ask her if she knew of Crump receiving five thousand dollars from Litchfield or any other person by which the matter was to be compromised—that is on the theory of the evidence.

Mr. Davidson: It may be on the theory but that is not what the evidence tends to show at all.

The Court: Shows he received five thousand dollars.

Mr. Davidson: Yes, but not from Litchfield employing him.

The Court: But the Court might find it under the status of this record. If I did make special findings I would find it. If he were to stay off the witness stand and Skinner stays off the witness stand and they have all this evidence in here I would take their silence—Proceed.

Q. Did you know at the time you appeared before the County Judge that Mr. Litchfield or anybody else had paid Mr. Crump or was to pay him \$5,000.00 to get this suit or this matter compromised?

A. No, sir, did not know anything.

Q. When did you first hear that Mr. Crump received a sum of money from anybody else for getting out of this matter or compromising this case?

A. I do not know to this day that he was ever paid any sum.

The Court: He asked her when she heard of the charge.

Q. Did you ever hear of the charge, ever hear Crump accused of taking money from Litchfield or anybody else?

A. No, sir.

The Court: Shows her lawyer has not advised her.

Mr. Rosser: No, sir, we have not tried to advise her.

Q. At the time you appeared before the County Judge did you know at that time that Mr. Crump had already assigned to Litchfield the lease you gave Crump?

A. No, sir.

Q. If you had known these other parties or anybody else was paying Mr. Crump—

The Court: It is not necessary to prove that. If he takes pay on both sides it would be fraud and—you are confronted with the proposition she executed the instrument and fair on the face and carried the legal title.

Mr. Rosser: There are two other questions, your Honor.

Q. You did receive a check at the time this matter was before the County Judge, a check for two thousand dollars?

A. Yes, sir.

Q. Was there anything said there by the County Court or in the presence of the County Court to your knowledge, did you hear or understand anything to be said about approving the Sims deed?

Mr. Davidson: I think that has all been over.

The Court: I think that is immaterial anyway. She signed the deed, the grantee had a right to go and have it approved.

Mr. Rosser: But the grantee did not do it. He was not there and did not have anything to do with it.

The Court: The Circuit Court of Appeals held if he approved it anywhere in the county it was all right.

Mr. Rosser: But it must be at the request of somebody. Sims was not there and did not know anything about it.

Mr. Lawson: He did not have to pay two thousand--

Mr. Rosser: Mr. Lawson's point is this—Sims had already sold it.

The Court: That is all right, any beneficiary could do it.

Mr. Lawson: Just want to get it in the record.

The Court: Very well, go ahead.

A. No, sir, I was not told anything regarding the transaction wherein B. O. Sims was involved and his name was never mentioned to me.

Q. Who gave you that check for two thousand dollars?

A. Wallace had the two thousand dollar check in his possession. He gave it to the County Judge and the Judge in turn handed it over to me.

The Court: Whereabouts was the County Judge then?

A. He was at his home. His home was in the northeast part of town.

The Court: Very well, take the witness—you want to cross examine him?

Mr. Davidson: Yes, sir, just in a moment.

Cross Examination of Hannah Canard Barnett by Mr. Davidson:

Q. Mr. Crump come to see you at the time you employed him to recover the Mehaley land or you go to see him?

A. I went over to see him. He was in town at the time.

Q. And you employed him as your attorney to get back this Mehaley land that you had given a deed for?

A. Yes, sir. I did not know at the time I had sold the allotment of Mehaley.

Q. You knew at that time you went to see Crump?

A. The first transaction was in the signing of an oil lease to Crump and it was at that time Crump told me he had to recover that land from Mehaley back to me.

Q. And that is what you employed Crump for, to get the land back? A. Yes, sir.

Q. Do you know that he did bring suit to recover that land? A. Yes, sir.

Q. Didn't Crump tell you that deed had been approved by the wrong court and should have been approved by the County Court of Okfuskee County and that was the trouble about it?

A. He told me that I had never sold that land and for that reason he would represent me.

Q. In that contract with Crump he agreed to pay you something, didn't he? A. No, sir.

Q. Didn't agree to pay you any money? Didn't he pay you at the time you entered into the contract with him something like two hundred or two hundred and fifty dollars?

The Court: Do they tender back the two thousand dollars in their bill?

Mr. Davidson: I don't think they do.

Mr. Rosser: Yes, sir.

Mr. Davidson: The bill is so long it is hard to keep it all in mind.

A. He promised to pay me one hundred dollars but that was for an oil lease he wanted and when we got before the County Judge the County Judge said raise that bid and he paid \$250.00.

Q. What did you think the two thousand dollars he said he would pay you was for?

A. I was told he was going to pay me two thousand dollars as a consideration for being released from the contract.

Q. Then were you to keep the two thousand and the land too?

A. Well, I just supposed he was paying me two thousand for getting his release from the contract and that went on that law suit.

Q. Didn't you understand if you took the two thousand you would let the land go?

A. Why I just took it for granted this law suit was being stopped.

Q. You mean the law suit was being settled? A. Yes, sir.

Q. And that you would take the two thousand in money to settle the law suit, that right?

A. I did not know it was being a compromise made but just told me he was paying me two thousand dollars.

The Court: I will find from this evidence she took the two thousand dollars and that was a final settlement and intended that—understood that. I don't think the idea of anybody giving her two thousand dollars to be released from the contract—that is ridiculous. The only thing in this case is whether her attorney being on both sides, whether that would invalidate it.

Q. Tucker Barnett, your husband, was with you every time you went to see Judge Smith? A. Yes, sir.

Q. He understands and talks English? A. Yes, sir.

Q. Did you know and didn't you understand Judge Smith to say that this two thousand dollars would be all you would get out of the Mehaley Watson land and that would end it and you would have no more right to it? A. Yes, sir.

* * * * *
Witness dismissed.

Mr. Stewart: We want to introduce defendants' exhibit 7, certified copy of petition filed in the District Court of Creek County, Oklahoma, by Hannah Canard Barnett v. B. O. Sims and Litchfield and others covering this land--a suit to quiet title, signed by Geo. C. Crump and J. L. Skinner, attorneys, filed on the 31st day of March, 1913, attached to the original petition.

Mr. Davidson: We make the general objection that it is incompetent, irrelevant and immaterial and does not affect the title to this land and does not tend to prove the allegations of the cross bill as to fraud.

The Court: It would just show he was acting as her attorney.

Mr. Davidson: That is admitted.

The Court: I know, but I will let them put it in the record if they want to make up a record.

Mr. Stewart: Also desire to offer defendants' exhibit 8, a certified copy of a disclaimer in a certain suit filed on behalf of B. O. Sims, attached to the original petition.

Mr. Davidson: I object as being incompetent, irrelevant and immaterial.

The Court: I will let them put the whole record in the case there.

Mr. Davidson: Give us an exception to the ruling.

The Court: Very well.

Mr. Stewart: We offer in evidence also defendants' exhibit 9, certified copy of stipulation.

Mr. Davidson: That is all attached as an exhibit to your cross-bill?

Mr. Stewart: Yes, sir.

The Court: I will let you put the whole record in.

Mr. Stewart: I offer all the exhibits attached to the original cross-bill.

The Court: I will let you offer that whole record in evidence, but the question comes up whether this plaintiff had knowledge of that. That made the record fair in its face.

Mr. Stewart: We are offering them for other purposes.

The Court: They go in for whatever they are worth but I don't see what they are competent for otherwise.

Whereupon Mr. H. B. CATLETT, a witness on behalf of the defendants, being first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

Direct Examination of Mr. H. B. Catlett by Mr. Rosser:

Q. State your name? A. H. B. Catlett.

Q. Where do you live? A. Weleetka, Oklahoma.

Q. What business are you engaged in?

A. Banking business.

Q. Were you engaged in that business in 1913?

A. Yes, sir.

Q. Do you know anything about a transaction that was—about a check that was paid to Hannah Canard Barnett in connection with Mehaley Watson allotment?

A. I know about a draft that was paid to her.

Q. Who got the draft, who paid the money through which the draft was obtained? A. Mr. Wallace.

Q. Who is he? A. R. D. Wallace, he bought the draft.

Q. Do you know who he represented? A. No, sir.

Q. Who paid or put the money into the bank to get the draft? A. R. D. Wallace.

Q. How much? A. Two thousand dollars.

By Mr. Lawson:

Q. How much connection did R. S. Litchfield have?

A. None I know of.

Witness dismissed.

Whereupon Mr. R. D. WALLACE, a witness on behalf of the defendants, being first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

Direct Examination of Mr. R. D. Wallace by Mr. Rosser:

Q. State your name? A. R. D. Wallace.

Q. Do you know of a draft for two thousand dollars being delivered to Hannah Canard Barnett? A. Yes, sir.

Q. Who bought the draft? A. I did.

Q. You paid your own money for it? A. Check.

Q. Where did you get the money from?

A. R. S. Litchfield.

Q. You were representing him in the transaction?

A. Yes, sir.

Witness dismissed.

Whereupon Mr. J. H. SWOFFORD, a witness on behalf of the defendants, being first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

Direct Examination of Mr. J. H. Swofford by Mr. Rosser:

Q. What is your name? A. J. H. Swofford.

Q. Where do you live? A. Okmulgee.

Q. Where did you live in 1913? A. Dustin.

Q. Are you acquainted with Hannah Canard Barnett?

A. Yes, sir.

Q. Do you know the land in controversy, known as the Mehaley Watson allotment?

A. I only know it by reference to maps. I have not seen the land.

Q. Were you a party to any negotiations with reference to the land in 1913, about the time of this settlement?

A. No, sir.

Q. You negotiate with anybody concerning it? A. No, sir.

Q. Nobody talked with you about the land at that time?

A. I think it was in 1912. Maybe November, 1912 that I was talking with Santa Watson, who claimed an interest in this land.

Mr. Davidson: When was that?

Mr. Rosser: November, 1912.

A. I think November, 1912, or a short time prior to the time this case which was mentioned was on before the court.

Q. Did you make an investigation of the value of that land then? A. Yes, in a way.

Q. Do you know how far it was from oil and gas development in 1913, early part of 1913?

A. About a quarter of a mile.

Q. Did you at that time examine the oil and gas maps made and used by oil men to ascertain how far it was from development? A. Yes, sir.

Q. Were these maps you examined maps oil men used in transacting their business in buying and selling leases?

A. Yes, sir, ordinary oil maps used by all of them.

Q. From your investigation—what business were you engaged in, were you at that time?

A. I was at that time in the real estate and oil business.

Q. From your investigations at that time, early part of 1913 and latter part of 1912, what was the Mehaley Watson allotment worth?

Mr. Davidson: I am going to object because it is not in the issues in this case. In the first place it is for the Court to determine the value and they have not attacked the findings of the Court on that proposition.

The Court : I don't think the witness is qualified to testify. If he was qualified I would let him testify. He said he never saw it. Only said he knows about it. He saw maps used by people. Don't say they were correct maps. Might not have been correct maps. If he examined maps that were made under authority of law that show where oil was and development and then he knew what oil property under such circumstances was worth, I would let him testify. Never saw the land and does not know how close it was to oil development except what he saw from some maps made by oil people and don't know whether they are correct.

Mr. Rosser: Your Honor, I had a different understanding what this witness' testimony would be. Stand aside.

Witness dismissed.

Whereupon Mr. J. B. PATTERSON, a witness on behalf of the defendants, being first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

Direct Examination of Mr. J. B. Patterson by Mr. Rosser:

Q. State your name? A. J. B. Patterson.

Q. Where do you live? A. Okemah, Oklahoma.

Q. Were you living there in May, 1913? A. Yes, sir.

Q. Do you know or did you know at that time anything about this transaction between Mehaley Watson and George C. Crump? I mean Hannah Canard Barnett and George C. Crump? A. Yes, sir.

Q. Did you know anything about any checks or drafts being drawn at that time payable to any persons relative to that transaction? A. Yes, sir.

Q. What checks or drafts were drawn at that time?

A. We had two checks at the time this deed was approved by A. P. Smith.

Q. Did you go before the County Judge at that time?

A. Yes, sir.

Q. Did you show him these checks? A. Yes, I think so.

Q. What was the amount of these two checks?

A. I think two thousand apiece.

Q. And who were the two checks payable to?

A. My recollection is one was payable to Geo. C. Crump and the other payable to Hannah Barnett.

Q. And both exhibited to the County Judge at that time?

A. Yes, sir, I think so.

The Court: Was Hannah Barnett present?

A. Yes, sir!

Q. Who gave the check to George C. Crump?

A. I would not be sure whether Mr. Litchfield's name was signed to that check or not. It has been a long time and I would not be sure. Two checks and my recollection is each were for two thousand dollars.

Cross Examination of Mr. J. B. Patterson by Mr. Davidson:

Q. Do you know what Hannah was getting the two thousand dollars for? A. Yes, sir.

Q. Was that stated in the court there? A. Yes, sir.

Q. By whom?

A. Stated to her by L. H. McDermott and also stated by Judge Smith and also stated to her husband Tucker Barnett by Judge Smith.

Q. Stated to her interpreter, McDermott? A. Yes, sir.

Q. What was stated to her by the Judge?

A. The Judge asked her if she understood this was an application to approve the deed made by her to B. O. Sims in 1909 that had been approved in Hughes County and she answered that in the affirmative and he asked her then if she

understood this two thousand would be all the money she would ever get for her land. She answered that question in the affirmative that she did and then he asked her if she wanted him to approve the deed that she had given B. O. Sims in 1909 and wanted him to deliver to her the check or draft for two thousand and she answered that she did. And he handed her the check and signed the order of approval.

The Court: Was there anything said about the other check, was that discussed in her presence?

A. Yes, sir.

The Court: What was said?

A. The check had been there once before.

The Court: Anything said in her presence about the other check, the check to Crump for two thousand dollars?

A. My recollection is there was—this other check to Crump, payable to him.

The Court: Was that discussed in her presence?

A. Yes, sir, in her presence and in the presence of her husband.

The Court: What was said?

A. It has been a long time and just exactly what was said in that transaction I do not recall now. I think Judge Smith asked her this, that there were two checks there for two thousand each and one for her and other was for her lawyer and if she understood that and she answered in the affirmative.

Q. Who took the order after it was signed by Judge Smith over to the clerk's office?

Mr. Lawson: That is wholly foreign to what we asked.

Further Direct Examination of John B. Patterson by Mr. Lawson.

Q. Can you understand the Creek language? A. Little bit.

Q. Can you understand a conversation?

A. No, sir—a little bit.

Q. Could you do that in 1913? A. Yes, sir.

Q. Could you carry on a conversation in Creek?

A. Not an intricate conversation.

Q. You don't know anything about what she was talking about there, do you? A. Well, I think I do.

Q. How did you find it out?

A. Well, I heard Judge Smith ask her these questions and I hear her answer.

Q. Do you know what she said?

A. Yes, heard what she said.

The Court: Did he ask her through an interpreter and she answer through an interpreter?

A. He asked her through McDermott, the interpreter, and I believe he answered back, but she answered uh huh.

Q. And that means sometimes the negative?

A. Yes, if you ask a negative question it means no, and to a positive question it means yes.

Q. Did you understand from her herself what answer she made? A. Yes, sir.

Q. On that day? A. Yes, sir.

Q. Please state what it was, if you don't understand Creek—

A. He asked her if she understood this was all the money she was going to get from her land and she answered, uh huh.

Q. If she could not understand English how do you know what she understood from the question?

A. I don't know what they asked her.

Q. You don't know what they asked?

The Court: He testified he asked her that through the interpreter.

Mr. Lawson: We move to strike that out.

The Court: Overruled. Her husband was present and I believe he talks English.

A. Yes, sir, talks English and Creek both, well.

The Court: Did he examine him?

A. Yes, sir.

Q. This occurred at Judge Smith's home? A. Yes, sir.

Q. What was his condition, well or sick? A. He was sick.

Q. In bed?

A. I believe he was lying down on a lounge. We phoned him from the clerk's office we were coming down there and my recollection is he got up from the lounge when we got down there.

Further Direct Examination of Mr. Patterson by Mr. Davidson.

Q. I will ask you when you delivered the order to the clerk, if you did?

A. My recollection is I took it myself. Mr. Wallace might have taken it, or the clerk, Bertha Roberts.

Q. That done at the direction of the Judge?

A. The Judge phoned up for Bertha Roberts and I think she came down and brought the seal. I know the seal was

brought there and I believe she was the clerk that brought it, but I am confident it was Bertha Roberts.

Q. Did either you or Wallace carry it to the clerk?

A. Yes, sir, either Wallace or myself, and I am quite sure I took it.

Q. That was at the request of Judge Smith? A. Yes, sir.

By Mr. Lawson:

Q. You were not an officer of the court or connected with the clerk's office at that time? A. No, sir.

Q. Neither Judge Wallace? A. No, sir.

The Court: But you say Judge Smith requested you to take it down and file it?

— A. Yes, sir, Judge Smith signed it and phoned up to the office to have the seal brought down, and he signed the order and put the seal on it and then I am quite sure Mr. Wallace or myself took it back up there.

The Court: How far is it from where he resided to the county court house?

A. About two blocks or two blocks and a half.

Q. You were at that time attorney for Litchfield?

A. Yes, but at that time was probably acting for Mr. Wallace.

Q. Wallace was representing Mr. Litchfield?

A. Yes, I believe I had talked to Mr. Litchfield over the phone though.

The Court: Where did Litchfield live?

A. Independence, Kansas.

Witness dismissed.

Whereupon, Mr. W. A. KUNKEL, having been first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

Direct Examination of Mr. W. A. Kunkel by Mr. Davidson.

Q. Your name is W. A. Kunkel? A. Yes, sir.

Q. You are the complainant in this suit? A. Yes, sir.

Q. You live in Indiana? A. Bluffton, Indiana.

Q. I will ask you, Mr. Kunkel, to tell the court when you first knew of the lands in controversy, the Mehaley Watson allotment?

A. When I went to see R. S. Litchfield to buy the property. In January we knew about the property; had some leases in Cushing and production in Glenn Pool and watching development.

Q. When was it you went to see Litchfield in Independence?

A. Monday morning after he came down to the bank, May 5, 1914.

Q. R. S. Litchfield, you learned, was one of the owners of the land? A. Yes, sir.

Q. Did you make any deal with R. S. Litchfield at that time for the purchase?

A. I talked to him at that time and he said he was offered five hundred and fifty thousand for the property, one-half cash and one-half oil, and I told him I would give him five hundred and fifty thousand cash for the property but wanted about ten days.

The Court: How many wells on it?

A. One in the Bartlesville sand and one on the west side in the Wheeler sand.

The Court: How long had they been in?

A. This well in the Bartlesville had been producing about thirty days.

The Court: How long had the well in the Wheeler sand been producing?

A. I don't know. It was a shallow well.

The Court: What was the—what is the production of the oil on that piece of land?

A. I don't know the production right today because I sold my fee several years ago.

The Court: After the suit was brought?

A. Yes, sir.

Q. Did you take any deed from Litchfield and the owners of the record title at that time?

A. I gave him my check for one thousand dollars and he said he would have the papers all executed and ready for inspection on Tuesday, the deed during the ten days would be in escrow in the First National Bank, the title was clean, everything had been passed by Rogers, Sherman & Veasey, of Tulsa, but the contract I made it was to be subject to the approval of my attorneys.

Q. Did you submit it to attorneys?

A. Yes, sir, Love and Fitzpatrick, Independence, Kansas.

Q. When was the final deed executed to you by Litchfield, May 12, 1914, that deed offered in evidence here? A. Yes, sir.

Q. Was the money then paid? A. Yes, sir.

Q. Now, at the time you took that last deed—

Mr. Lawson: We object to that. The object of that is to show and establish that Mr. Kunkel and the Prairie

Oil & Gas Company are bona fide purchasers and that this was regular and had it assigned, etc., and we object to that testimony or anything pertaining to that along that line, attempting to show they are bona fide purchasers for the reason, first, that this contract and agreement of Kunkel's was on record and duly recorded and also the contract between Crump and Litchfield was on record and duly recorded and also the Kunkel deed from Crump to Litchfield was on record and duly recorded in which the title to this land was shadowed—the rights of the defendants in this case would show—a public matter, and for the further reason that in the bill, also in the reply, they have not shown or plead that they are innocent purchasers. In order to show they are innocent purchasers it is necessary to set that up as a plea to show the day and date of the deed under which they claim, the consideration that they paid and that the consideration was fully paid and the deed was fully delivered before they ascertained any information of the invalidity of the deed.

The Court: Do you plead it?

Mr. Davidson: Yes, sir.

Mr. Lawson: Don't set that out, only say they are innocent purchasers.

Mr. Davidson: Yes, sir. I will read it.

(Whereupon counsel read the allegation in question to the court.)

The Court: Very well, the objection is overruled and your exceptions noted.

Mr. Lawson: That is not all the objection.

The Court: Get them in.

Mr. Lawson: We also allege that the Prairie Oil & Gas Company—

The Court: I understand that. Put your objection in the record.

Mr. Lawson: Plaintiff further objects because it is charged in the answer and cross petition of defendant that the plaintiff, Kunkel, was obligated by the Prairie Oil & Gas Company to give an indemnifying bond on the title of this land prior to the execution of said lease to the Prairie Oil & Gas Company in the sum of—I believe, four hundred and fifty thousand dollars—I am not positive about that—which is not denied by the plaintiff or the Prairie Oil Company, as required by law.

The Court: Why state not denied as required by law?

Mr. Lawson: Don't mention it. My recollection, they don't mention it anywhere.

Mr. Davidson: We have tried to deny everything.

The Court: I will let you amend. The court gives the attorney on the opposite side opportunity to amend his pleadings so as to deny it.

Mr. Lawson: The defendants except to the action of the court at this late date in permitting the plaintiff to so amend his pleadings.

Q. I started to ask you at the time this money was paid to R. S. Litchfield and at the time you took the deed from R. S. Litchfield, whether you had any knowledge or actual knowledge of any of the transactions between George Crump and Hannah Canard or between George Crump and R. S. Litchfield, or as to any of the transactions testified to by the witnesses this morning in the office of the lawyer by the name of Skinner, alleged to be a partner of George Crump, or whether you had any knowledge or notice of the payment of money to Crump by Litchfield, or whether you had any knowledge or notice of what was done outside of the order of approval at the home of Judge Smith on June 17, 1913, or whether George Crump was representing Litchfield instead of Hannah Canard or whether you had any knowledge or notice or any intimation that Hannah Canard Barnett or husband Tucker Barnett was asserting or claiming any interest to this land at the time you purchased it? A. No, sir.

Mr. Lawson: Hannah Canard Barnett objects to the foregoing question and any answer thereto or anything pertaining thereto—first, because the same is leading and suggestive; second, because it is wholly immaterial whether this witness had direct or personal knowledge of such matters; that the lands were restricted and in the hands of a full-blood Creek woman and governed by the Acts of Congress mentioned and described in the cross complaint of said defendants, and so in this case and admitted in the record in this case that at the time of the execution of the deed to B. O. Sims on the 22nd day of March, 1909, through which this plaintiff and others claim the legal title was in the Creek Nation in the United States and therefore only the equitable, if anything, passed under said deed to Sims by reason of which the doctrine of bona fide purchaser cannot apply to this defendant or anyone else connected with this case, as the legal title thereto is still in the defendant Hannah Canard Barnett under section 5 of Act of Congress of April 26, 1906.

The Court: When was the patent issued to this land?

Mr. Davidson: 1909, just a few days after—

The Court: Patent had not been issued—no evidence here—

Mr. Davidson: Stipulation—

The Court: Stipulation the patent issued when?

Mr. Lawson: 27th of March, 1909. This deed was 22nd of March, five days before.

The Court: This was a warranty deed?

Mr. Davidson: Yes, sir.

The Court: When the patent was issued the land inured to Sims. Very well, I overrule the objection.

Q. You say this land was producing oil at the time you purchased it? A. Yes, sir.

Q. And R. S. Litchfield and other record owners in possession at the time you bought it? A. Yes, sir.

Q. And you took the title relying on the record as disclosed by the abstract passed on by your attorney?

A. Yes, sir.

Q. Where is R. S. Litchfield, is he living?

A. No, sir, he is dead.

Cross Examination of Mr. W. A. Kunkel by Mr. Rosser.

Q. Are you related in any way to R. S. Litchfield?

A. No, sir.

Q. Not acquainted with him before this transaction?

A. Yes, sir, I had known him.

Q. How long had you known him?

A. Since the first time I was in Independence, 1907, I think.

Q. How long had you known of this land prior to purchasing it?

A. Just knew of it by the drilling reports, you know.

Q. Well, you were at that time connected with the Prairie Oil & Gas Company?

A. No, sir.

Q. Had not prior to that time?

A. No, sir, never was on the pay roll in my life.

Q. Was not connected with them in no way? How long had you known of the drilling on this land or contiguous to this land?

A. Known about the Cushing since they started first well.

Q. You were familiar with the land? [A.] Had not been on the land, but familiar with it from maps.

Q. But knew about it from the location; I believe you said you paid five hundred and fifty thousand dollars?

A. Yes, sir.

Q. You had the abstract to the land?

A. Abstract furnished with the papers by R. S. Litchfield.

Q. And you had the abstract examined? A. Yes, sir.

Q. Have you that abstract here? A. No, sir.

Q. Do you know where it is? A. I don't know.

Q. And you can't—will not say now what was contained in the abstract as to what was on record, whether it contained everything on record?

A. I don't think I ever looked at the abstract.

Q. Just relied on your attorney? A. Yes, sir.

Q. And had no independent examination made of the records aside from what appeared on the abstract?

A. No, sir.

Q. When did you first ascertain Mr. Crump had at one time represented this woman?

A. I never knew it until this case, the argument of the case in Muskogee, three years ago.

Q. Never knew anything about it until that time?

A. Yes, sir, I did—got a wire from Sherman, Veasey and O'Meara saying they were going to file a case in the state court asking for permission to file in the Federal court. I wired yes, depending on them as my attorneys.

Q. That after you made the lease to the Prairie Oil & Gas Company? A. Yes, sir.

Q. Mr. Veasey represented Mr. Litchfield in the suit filed in the state court that was compromised at the time this settlement was made?

A. I don't know about that.

Q. Have you examined the records since this suit was brought to ascertain whether that was true? A. I have not.

Q. Did Mr. Veasey in passing on this title or any one connected with that firm inform you they had represented Mr. Litchfield in connection with this matter?

A. Mr. Litchfield said he had the abstract passed by Sherman & Veasey.

Q. He tell you he had them represent him in litigation concerning this property? A. No, sir.

Q. And never ascertained that until this case was tried before in Muskogee?

A. None of the details. Did not know anything about it until I heard the arguments in Muskogee. The fact is, I had sold it and did not know anything about the case.

Q. Were you informed at any time or about the time you purchased it or before you paid the purchase money that Mr. Crump had an oil and gas lease on it and assigned it to Litchfield?

A. No, sir. It was probably in the papers and the attorneys examined it, but I did not see it.

Q. And your attention was not called particularly to the contract Mr. Crump had with Canard?

A. No, sir, I presume not.

Q. You have ascertained it was on record all that time?

A. I don't know. I have not looked at it. I am not sure of it.

Q. When was it with reference to the time you bought the land the Prairie Oil & Gas Company took a lease on it?

A. Same day I bought the property.

Q. Same day you received the deed? A. Yes, sir.

Q. As a matter of fact, negotiations were pending between you and the Prairie with reference to the lease at the time the negotiations were pending between you and Litchfield —

A. Absolutely not—buying it from W. A. Kunkel——

Q. And were you not then trading the lease to them in case you bought it?

A. When I came upstairs Monday they had a directors' meeting below in the bank. I was down there with Litchfield. When I came up Mr. C. H. Coonts was standing there and he said he was figuring on the property. I said, you are too late. He said, you are going to give us a chance to buy the property, we have done business, and I said, I am going to have ten days and I am going to take it to Chicago. He said, Mr. Moody will be here Wednesday and O'Neal Tuesday, and asked me to wait until they came, which I did, and went down and looked at the property Saturday and came back Saturday night and had a directors' meeting and said they would give me five hundred and fifty thousand for the lease and include the wells. I told them I was going to keep the fee. Sold them the lease for the same amount I paid for the lease and the fee.

Q. Those negotiations took place before you got the deed, before this title was passed?

A. Then as they were figuring on it I went to the Prairie's attorney because if they were good enough for them they were good enough for me. They were the only attorneys I had in the transaction.

Q. And the first deed you took was a deed of special warranty?

A. That was executed on Tuesday 6th and brought over when the money was to be paid in the forenoon in the Prairie's office.

Q. And during that time the Prairie's attorneys had been examining the title? A. No, sir.

Q. Want to get it straight—when did they examine the title?

A. On this Saturday night they closed up on Monday, the papers were in the First National Bank in escrow and Litch-

field brought the papers over to the Prairie for their attorneys—that was on the 12th.

Q. He brought them over there and at that time did not have a general warranty deed?

The Court: Had you paid the money?

A. Yes, sir, paid the money at that day.

The Court: Did you have a general warranty deed before you paid the money?

A. No, sir, it was a special—called a special warranty deed before they agreed to give a warranty deed for it.

Q. You got a general warranty deed later?

A. I forgot the time—

Q. Was six days later—the special warranty made on the 6th and the general warranty on the 12th as a matter of fact?

A. Money was paid on the 12th and some little time after that the warranty deed.

Q. Warranty deed made sometime after the money was paid? A. Yes, sir.

The Court: But at the time the money was paid it was understood they would execute a warranty deed?

A. Yes, sir.

Q. You took a lease from the Prairie?

The Court: The Prairie took a lease from him.

A. 12th.

Q. I mean the Prairie, the day you got the special warranty? A. The day I got the special warranty.—

Q. At that time the lease or land was making oil; it was pro-

A. Yes, sir.

Prairie at that time demanded and requested you

to protect them so the oil from off-set wells?

by me.

Q. ever did? A. Never did.

Q. nothing of that sort occurred? A. No, sir.

Q. How was this money paid?

A. This five hundred and fifty thousand?

Q. Yes.

A. Paid by check of Prairie Oil & Gas Company to Litchfield.

Q. The Prairie paid the check instead of giving the check to you and letting you turn it to them—they just transferred it direct?

A. Yes, and we both signed the voucher for it.

Q. Do you know how much oil it was making at that time?

A. I just paid attention to the Bartlesville well. I think it was making about fifteen hundred barrels.

Further Direct Examination of Mr. W. A. Kunkel by Mr. Davidson.

Q. Mr. Kunkel, in this conversation with Mr. Litchfield you found out some other parties had an interest in that land?

A. Yes, sir, when I first went to him, had a date with him before Monday when he was going to call the other fellows together.

Q. And took an agreement from these people to execute the warranty deed?

A. Yes, that is the original statement.

Q. That is the original—that is signed by everybody who had an interest in this land agreed to give you a warranty deed? A. Yes, sir.

Q. And finally got a warranty deed? A. Yes, sir.

Q. Don't remember whether the money was paid on that day but paid about that time?

A. Yes, sir; money paid on the day I gave the Prairie a lease or Monday or probably Tuesday. I don't think the money was paid until next day and the attorneys wanted something done and the cash was not paid until next day or the next day.

Mr. Davidson: We offer plaintiff's exhibit 9.

The Court: It is admitted.

Q. This five hundred and fifty thousand was it this tract alone or other lands included in that deal with Litchfield?

A. It was the Mehaley Watson and Anna Bird three hundred and twenty acres.

Q. And the five hundred and fifty thousand was for both tracts?

A. Yes, sir. On the Anna Bird farm southeast location of the 80 running north and south.

Q. Not on the Mehaley Watson? A. No, sir.

The Court: Any well on the Mehaley Watson?

A. The Wheeler sand. The Bartlesville sand—new well in the Bartlesville sand what made it valuable to me.

The Court: Allotments join?

A. Yes, sir.

Q. Did not regard the Wheeler well of much account?

A. No, sir.

Q. And the Bartlesville well came in 30 days prior to the time you bought it? A. Yes, sir.

Q. How far was the Bartlesville well from the land you bought?

A. I don't know just exactly where the Wheeler well was located.

The Court: How far was the Bartlesville well located from the boundary of the Watson land?

A. About a half a mile, I think. One eighty running up and down and to the east and west. I should judge a half a mile.

Q. Was that Bartlesville well the first discovered in the Bartlesville sand down there?

A. Down in that territory, yes, sir.

Witness dismissed.

Whereupon Mr. NELSON K. MOODY, a witness on behalf of the plaintiff, being first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:
Direct Examination of Mr. Nelson K. Moody by Mr. Davidson.

Q. State your full name? A. Nelson K. Moody.

Q. Live in Independence, Kansas? A. Yes, sir.

Q. What position do you hold with the Prairie Oil & Gas Company in May, 1914? A. Vice president.

Q. Relative to the oil and gas lease from Kunkel to the Prairie Oil & Gas Company, May 12, 1914, which has been introduced in evidence, I will ask you to state who conducted the transaction between the company and Kunkel on behalf of the company? A. I did.

Q. I will ask you to state to the court whether the company had been running oil from this land prior to the time that Mr. Kunkel came to see you?

A. Yes, we had for sometime.

Q. Had this title examined by your legal department?

A. That was our custom. We bought and paid for the oil, so the title was probably examined.

Q. Do you remember the date Mr. Kunkel and you had negotiations with reference to taking the lease?

A. It was about—our first conversation was about the 6th day of May, 1914.

Q. It finally culminated in your company taking the lease May 12, 1914? A. Yes, sir.

Q. And you have been running oil ever since?

A. Yes, sir.

Q. I will ask you to state, Mr. Moody, whether you knew or your company knew at the time you paid the consideration for this lease and at the time the lease was delivered to your company by Mr. Kunkel, whether you or your company had any notice or knowledge of the alleged relationship between Hannah Canard and her attorney, George C. Crump, or the relationship between R. S. Litchfield and George C. Crump, or as to whether R. S. Litchfield paid any money to George C. Crump in connection with the transaction for any purpose or whether you knew of any transaction testified to by the wit-

nesses this morning relative to what took place with one Skinner stated to be a law partner of George C. Crump, or whether you had any notice or knowledge of the payment of money to either Crump or Hannah Canard or what was said or done in the home of Judge Smith, judge of the county court of Okfuskee County, June 17, 1913, outside of what was disclosed by the record, or whether you or your company had any knowledge or notice of any claim or claims asserted by Hannah Canard Barnett or her husband to this land at that time?

A. None, whatever.

Mr. Lawson: Tucker Barnett and Hannah Canard Barnett object to the foregoing question and any answer thereto upon the same grounds and same reasons interposed to the same or similar questions propounded to the witness, W. A. Kunkel.

The Court: Overruled.

Mr. Lawson: The defendants except.

Cross Examination of Mr. Nelson K. Moody by Mr. Rosser.

Q. You heard Mr. Kunkel's statement as to the way this land was paid for, that is, that the Prairie Oil & Gas Company gave a check for five hundred and fifty thousand dollars for the lease on the land and that check was delivered direct to Litchfield in payment for his deed to the land? A. Yes, sir.

Q. That is correct? A. Yes, sir.

Q. It was the check of the Prairie Oil & Gas Company that paid for the land? A. To Litchfield.

Q. You made the check direct to Litchfield?

A. Yes, as I recollect.

Q. You don't know of your own personal knowledge what the record did show, did not make a personal examination of the record or abstract? A. No, sir.

Q. Have you the abstract on the land furnished to your attorneys at that time? A. I have not got it.

Q. You have not got it with you; it is not here?

A. No, sir.

Further Direct Examination of Mr. Nelson K. Moody by Mr. Davidson.

Q. This lease covers two tracts of land, Mehaley Watson and Anna Bird—was this five hundred and fifty thousand dollars paid for the lease on both tracts?

A. Took one lease from W. A. Kunkel covering two allotments, one the Mehaley Watson allotment and the other the Annie Bird, but covered in one lease, three hundred and twenty acres and the consideration was for the three hundred and twenty acres.

- Q. Which was the more valuable tract at that time?
 A. Anna Bird.

- The Court: Which is the more valuable now?
 A. Anna Bird still more valuable.
 Q. Your company drilled other wells on the land?
 A. We have.

Q. Do you remember when Mr. Kunkel brought his suit, whether there were a number of wells drilled on the land prior to that time?

A. Largely developed at the time Mr. Kunkel brought his suit, which, as I remember, was in 1916.

Q. 1915? A. 1915.

The Court: How many wells on it then?

A. I cannot state positively and I cannot state how many on the Mehaley Watson and Annie Bird, but I should say on both tracts at that time we had probably completed in the neighborhood of twenty wells.

By Mr. Rosser.

Q. At the time the suit was brought by Mr. Kunkel, Hannah Canard Barnett had employed Mr. Lawson and the firm of Owen & Stone, or Stone, Moon & Stewart to clear up her title? A. I do not know.

Q. They had a contract on record? A. I don't know.

Witness dismissed.

Whereupon Mr. T. J. FARR, a witness on behalf of the plaintiff, being first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

Direct Examination of Mr. T. J. Farr by Mr. Davidson.

Q. Your name is T. J. Farr? A. Yes, sir.
 Q. You are an attorney? A. Yes, sir.

Q. What official position did you have with the government, if any, in the month of June and May, 1915?

A. I was field clerk under the direction of the superintendent of the Five Civilized Tribes.

Q. Among your duties as field clerk was it your business to look up probate seals of Indian lands? A. Yes, sir.

Q. You recollect whether you had any communication from Judge Smith relative to the sale of the Mehaley Watson allotment? A. I did.

Q. What did he want you to do?
 A. Wanted me to ascertain about what the land was worth in 1909.

Q. Did you have an investigation made or make an investigation yourself?

A. I did not make an investigation myself and I cannot recall in what manner I did ascertain but did it through some official source, either by writing the field clerk at Sapulpa or writing to the regular land appraisers.

Q. Did you satisfy yourself as to the value? A. Yes, sir.

Q. Did you so advise Judge Smith? A. Yes, sir.

Q. Do you know whether as a matter of fact Judge Smith had delayed approval of this deed until he could hear from you? A. Yes, he asked me to ascertain.

Q. And you did ascertain and advise him?

A. Yes, sir, had learned she had been paid five hundred dollars and was getting two thousand additional.

Mr. Lawson: I object and ask to strike the answer out as hearsay.

The Court: Sustained.

Q. From the information you had learned as to the land did you advise Judge Smith that two thousand dollars was a fair value for that land at that time? A. I did.

Mr. Rosser: I object to that as being incompetent, irrelevant and immaterial.

The Court: I don't think this is competent. I will sustain the objection. I will let it go in this far, that Judge Smith requested him to make an investigation in his official capacity and advise him what he thought it was worth, at the date the Sims deed was made, and he advised him if you can, you can show the date he advised him. Do you remember the date you advised him?

A. Along about the approval of this other deed, before.

The Court: You think it was before?

A. Before, I think.

The Court: Very well, I will let it go in that far, just for the purpose of showing the effort or efficiency of Judge Smith to pass on it.

Cross Examination of Mr. T. J. Farr by Mr. Rosser.

Q. How long before this approval, if you know, was it that Judge Smith had communicated with you?

A. Probably a week or ten days.

Q. You know of Judge Smith's physical condition at that time, what it was?

A. He was at home, not in the court room.

Q. As a matter of fact don't you know the petition to

approve the deed was filed on the same day the deed was approved? A. I don't know anything about that.

Witness dismissed.

The Court: Anything further?

Mr. Davidson: We rest.

The Court: Anything further?

Mr. Rosser: We have nothing further.

Plaintiff's Exhibit No. 1.

In the District Court of the United States for the Eastern District of Oklahoma.—W. A. Kunkle, Complainant, vs. Santa Watson, et al., Defendants.—In Equity, No. 2154.

STIPULATION.

It is stipulated and agreed by the parties in this case:

1st. That Mehaley Watson was a duly enrolled citizen of the Creek Nation of eleven-sixteenths (11/16) Indian blood, enrolled opposite Minor Creek rolls No. 143.

2nd. That there was arbitrarily selected and set apart by the Commissioner to the Five Civilized Tribes for her allotment of lands on November 15, 1907, the North half of the North half of section 21, Township 17 North, Range 7 East, located in what is now Creek County, Oklahoma.

3rd. That there was issued by the Commissioner to the Five Civilized Tribes, certificates of allotment for said lands dated July 27, 1908, in the name of Mehaley Watson.

4th. That homestead and allotment patents were issued for said lands duly signed by the Principal Chief of the Creek Nation on the 10th day of March, 1909, in the name of Mehaley Watson, and approved by the Secretary of the Interior on the 24th day of March, 1909, and recorded on the 27th day of March, 1909.

5th. That the allottee, Mehaley Watson, was the illegitimate child of the defendant, Hannah Canard Barnett, and that Hannah Canard Barnett is a duly enrolled full blood Creek Indian.

6th. That Mehaley Watson died in infancy in October or November, 1908, being a resident of Okfuskee County, Oklahoma, at the time of her death. That the said Mehaley Wat-

son lived, resided and had her place of abode in the County of Okfuskee, State of Oklahoma, at the time of her death.

7th. That the defendant and cross-complainant, Hannah Canard Barnett, survived the allottee, and is her sole heir.

8th. It is further stipulated that the complainant, W. A. Kunkle, was in actual possession of the lands in controversy at the time of the institution of this suit, and had been in actual possession thereof from the date of his deed from R. S. Litchfield, Thomas J. Booth, and H. G. Cheney and their wives.

9th. It is further stipulated that the cross-defendant, The Prairie Oil & Gas Company, from the date of its lease had been in possession of said lands as lessee, operating the same for oil and gas mining purposes under such lease, and that oil and gas in great quantities has been discovered upon said lands under said lease by the Prairie Oil and Gas Company.

10th. It is further stipulated that the complainant, W. A. Kunkle, is now and was at the time of the institution of this suit an actual resident and citizen of this State of Indiana, and that the amount herein involved exceeds the amount of \$3,000.00, exclusive of interest and costs.

Jas. A. Veasey,
J. B. Patterson,
West, Sherman, Davidson & Moore,
Attorneys for Complainant.

Louis C. Lawson,
Malcolm E. Rosser,
Francis Stewart,
Attorneys for Defendants.

West, Sherman, Davidson & Moore,
Attorneys for the Prairie Oil
& Gas Company.

Endorsed on back as follows, to-wit: In the District Court of the United States for the Eastern District of Oklahoma. W. A. Kunkle, Complainant, vs. Santa Watson, et al., Defendants. Stipulation.

No. 7088.

Warranty Deed—(Statutory Form.)

Hannah Canard,
to
B. O. Sims.

In the County Court of Hughes County, Oklahoma.

In the Matter of the Approval) Hannah Canard,
of Deed from the Full Blood)
Heirs of Mehaley Watson, deceased.) Petitioner.

ORDER.

This cause coming on to be heard on this the 22nd day of March, 1909, on the petition of the within petitioner, and the deed tendered therewith, and the said petitioner *Hannah Canard*, appearing *appearing* in person and by her attorneys, Watten and Miller and the grantee in said deed, B. O. Sims, not appearing and said cause being submitted on said petition and said deed on the testimony of Hannah Canard, W. J. Brown and Billy Green and the Court being fully advised and satisfied in the premises, finds:

1. That Mehaley Watson was a citizen of the Creek or Muskogee Tribe of Indians, and that her name appears on the Minor Creek Roll opposite No. 143; that as such citizen there was allotted to her as her pro rata share of the land of the Creek Nation 160 acres, described as follows:

The North Half of the North Half of Section Twenty-one (21), Township Seventeen (17) North, Range Seven (7) East, Creek County, Oklahoma.

2. That said Mehaley Watson is dead; that she died in the month of October, 1908, aged four years; that she was an illegitimate child; that she left surviving her as her only heir her mother, Hannah Canard, the petitioner herein; that said Hannah Canard is an adult and enrolled as a full blood Creek Indian and her roll number is 4574; that said Mehaley Watson died in the Creek Nation, Indian Territory, and in that part thereof of which she was a bona fide resident which is now incorporated in the County of Hughes, State of Oklahoma; that she left no will and there has been no administration of her estate.

3. That the said Hannah Canard is the sole heir of said Mehaley Watson, deceased, and that she has *sole* said land to B. O. Sims for the sum of \$500.00, that said sum is not disproportionate to the true value of said land and that it is for the best interests of petitioner that said deed be approved.

It is therefore ordered and adjudged that the said deed from Hannah Canard to B. O. Sims, dated March 22nd, 1909, for a consideration of \$500, signed by said Hannah Canard and acknowledged before C. W. Miller, a Notary Public and witness by C. L. Smith and W. J. Brown covering the above described land be and the same is in all things ratified, confirmed and approved.

P. W. Gardner,

County Judge, Hughes County, Oklahoma.

Certificate of True Copy.

State of Oklahoma, County of Hughes, ss.

I, C. L. Smith, County Stenographer and Ex-Officio Clerk County Court, in and for the County and State aforesaid, do hereby certify that the above and foregoing is a full, true and complete copy of an order approving a warranty deed from Hannah Canard, full-blood Indian, and heir of Mehaley Watson, deceased, to B. O. Sims, Probate No. 377, as the same appears of file and of record in this office.

Witness my hand as such County stenographer and ex-officio Clerk County Court and the official seal of said Court, this 24th day of March, 1909.

County Court Seal.

C. L. Smith,

County Stenographer and ex-officio Clerk County Court.

Plaintiff's Exhibit No. 2.

Warranty Deed—(Statutory Form.)

State of Oklahoma, Hughes County, ss.

Know all men by these presents: That Hannah Canard, party of the first part, in consideration of the sum of Five Hundred Dollars in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto B. O. Sims, the following described real property and premises, situate in Creek County, State of Oklahoma, to-wit:

The North half of the North Half of Section Twenty-one (21), Township Seventeen (17) North, Range Seven (7) East,

together with all of the improvements thereon and the appurtenances thereunto belonging and warrant the title to the same.

To have and to hold said described premises unto the said party of second part his heirs and assigns forever, free, clear and discharged of and from all former grants, charges, judgments, mortgages and other liens and incumbrances of whatsoever nature.

Signed and delivered this 22nd day of March, 1909.

Witness: C. L. Smith, W. J. Brown. Hannah Canard.

State of Oklahoma, Hughes County, ss.

Before me, a Notary Public, in and for said County and State, on the 22nd day of March, 1909, personally appeared Hannah Canard and to me known to be the identical person who executed the within and foregoing instrument,

and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal, the day and date above written. (Seal) C. W. Miller, Notary Public.
My commission expires Feby. 24, 1913.

Approved Meh. 22, 1909. P. W. Gardner, County Judge.
State of Oklahoma, County of Creek, ss.

This instrument was filed in my office for record on the 26 day of Mar. A. D. 1909, at 8 o'clock A. M. and duly recorded in Book 31 at page 104. Lafe Speer, Register of Deeds.

Certificate of True Copy.

State of Oklahoma, County of Creek, ss:

I, C. K. Maddox, County Clerk of Creek County, State of Oklahoma, do hereby certify that the foregoing is a true copy of warranty deed with order of approval as the same appears of records of this office. Filed 26 day of March, 1909, at 8 o'clock A. M. and recorded in Vol. 31 at page 104.

Witness my hand and seal at Sapulpa, Creek County, Oklahoma, this the 14 day of January, 1921.

(Seal)

C. K. Maddox, County Clerk.

Plaintiff's Exhibit No. 3.

State of Oklahoma, County of Okfuskee, ss. County Court.

Certificate of True Copy.

I, M. C. Jones, Court Clerk in and for the County aforesaid, do hereby certify that I am the duly elected, qualified and acting Court Clerk in and for Okfuskee County, Oklahoma; that I am the officer legally entitled to the custody of the records and files of the County Court in and for said County and that said records and files *and now* in my custody and under my control, and further certify the following to be a full, true and complete copy of the order approving deed from full blood heirs of Mehaley Watson to B. O. Sims, in full blood approval case No. 755, as the same appears on file and of record in my office.

Witness my hand and seal of said Court this 15th day of January, 1921.

(Seal)

M. S. Jones,
Court Clerk in and for Okfuskee County, Oklahoma.

In the County Court of Okfuskee County, Oklahoma. In the Matter of the Approval of a Deed from Full-Blood Heirs of Mehaley Watson, Deceased. No. 755.

ORDER.

On this the 17 day of June, 1913, came on to be heard the petition of Hannah Canard Barnett and Tucker K. Barnett asking the approval of a warranty deed, heretofore made and executed by the said Hannah Canard Barnett to B. O. Sims, the petitioners appearing in person and by their attorney, Geo. C. Crump, and the grantee, B. O. Sims, appearing by attorney, J. B. Patterson, the Court proceeds to hear said petition, upon the examination of the same, and upon the oral and documentary evidence adduced in support thereof. From this the Court finds that Mehaley Watson was a full-blood Creek Indian enrolled as such on the final rolls of the Creek Tribe, opposite to Creek minor roll number 143; that the said Mehaley Watson was entitled to participate in the final distribution of the lands of the Creek Tribe, and there was allotted and deeded to her, as her share of said lands, the following real estate in Creek County, Oklahoma, to-wit:

The North Half ($\frac{1}{2}$) of the North Half ($\frac{1}{2}$) of Section Twenty-one (21) Township 17 North, Range Seven (7) East.

That the said Mehaley Watson died in what is now Okfuskee County, Oklahoma, and of which said County, she was a resident at the time of her death, at some time during the month of October, 1908, the exact day of which month, your petitioners do now not know; that she died intestate and without issue, leaving surviving her as her sole and only heir at law, her mother, Hannah Canard, whose name is now Hannah Canard Barnett, and who is one of the petitioners herein; that said Hannah Canard Barnett is now an adult of full lawful age; that she is a full-blood Creek Indian, and her name appears upon the rolls of said tribe, opposite to number 4574; that upon the death of the said Mehaley Watson, her mother, Hannah Canard, became the absolute owner in fee simple, of the real estate above described.

The Court finds that on the 22nd day of March, 1909, the said Hannah Canard made, executed and delivered a warranty deed conveying the real estate above mentioned to B. O. Sims, and that on said day, she presented said deed, together with her petition, asking for the approval thereof, to the County Court of Hughes County, Oklahoma, stating and alleging in her said petition, that the above mentioned Mehaley Watson died in Hughes County, Oklahoma, instead of in Okfuskee County, Oklahoma; that upon said petition, and upon the

sworn testimony offered in support thereof, the said deed was by the County Court of Hughes County, Oklahoma, duly approved on said 22nd day of March, 1909.

The Court finds that since the approval of said deed by the County Court of Hughes County, Oklahoma, that these petitioners have learned that Mehaley Watson died in Okfuskee County, Oklahoma, and not Hughes County, Oklahoma, and that they present said deed, together with their petition herein mentioned to this Court, asking that said deed be by this Court approved and the sale confirmed.

The Court finds that there has been additional consideration paid to said grantees amounting to \$2,000.00, which the Court finds has been paid to them on this date in money.

The Court also finds that said consideration is reasonable, fair and just and that it is to the best interests of all parties concerned that said deed be approved and the sale ratified and confirmed.

It is therefore, hereby considered, ordered, adjudged and decreed by this Court that said warranty deed bearing date of March 22nd, 1909, executed by Hannah Canard to B. O. Sims, and conveying to the said B. O. Sims, the real estate herein mentioned, be and the same is hereby in all things ratified, approved and confirmed.

Witness my hand and official seal, on this the 17th day of June, 1913. (Seal) A. P. Smith, County Judge of Okfuskee County, Oklahoma.

Filed June 17, 1913. Natt D. Dossey, Clerk County Court. Recorded in full-blood approval record No. 2, page 384, 385.

Hannah Canard Barnett and Tucker K. Barnett, to B. O. Sims. No. 755.

June 17. Petition for approval of "Warranty Deed" on the following described real estate, to-wit:

N $\frac{1}{2}$ of N $\frac{1}{2}$ of Sec. 21 Twp. 17 Rge. 7 East
for a consideration of \$2,000.00 additional to \$500.00 paid at time deed was approved in Hughes County from same parties.

June 17. Order approving deed filed June 17th, 1913.

(Above from page 391, Land Approval Fee Record No. L Okfuskee County, Oklahoma.)

Proof.

In the County Court of Okfuskee County, Oklahoma. In the Matter of the Approval of a Deed from Full-Blood Heirs of Mehaley Watson, Deceased. No. 755.

ORDER.

On this the 17 day of June, 1913, came on to be heard the petition of Hannah Canard Barnett and Tucker K. Barnett asking the approval of a warranty deed, heretofore made and executed by the said Hannah Canard Barnett, to B. O. Smims, the petitioners appearing in person and by their attorney, Geo. C. Crump, and the grantee, B. O. Smims, appearing by attorney, J. B. Patterson, the Court proceeds to hear said petition, upon the examination of the same, and upon the oral and documentary evidence adduced in support thereof. From this the Court finds that Mehaley Watson was a full-blood Creek Indian, enrolled as such on the final rolls of the Creek Tribe, opposite to Creek minor roll number 143; that the said Mehaley Watson was entitled to participate in the final distribution of the lands of the Creek Tribe, and there was allotted and deeded to her, as her share of said lands, the following real estate in Creek County, Oklahoma, to-wit:

The North Half ($\frac{1}{2}$) of the North Half ($\frac{1}{2}$) of Section Twenty-one (21) Township 17 North, Range Seven (7) East.

That the said Mehaley Watson died in what is now Okfuskee County, Oklahoma, and of which said County, she was a resident at the time of her death, at some time during the month of October, 1908, the exact day of *which* month, your petitioners do now not know; that she died intestate and without issue, leaving surviving her as her sole and only heir at law, her mother, Hannah Canard, whose name is now Hannah Canard Barnett, and who is one of the petitioners herein; that said Hannah Canard Barnett is now an adult of full lawful age; that she is a full-blood Creek Indian, and her name appears upon the rolls of said Tribe, opposite to number 4574; that upon the death of the said Mehaley Watson, her mother, Hannah Canard, became the absolute owner in fee simple, of the real estate above described.

The Court finds that on the 22nd day of March, 1909, that the said Hannah Canard made, executed and delivered a warranty deed conveying the real estate above mentioned to B. O. Sims, and that on said day, she presented said deed, together with her petition, asking for the approval thereof, to the County Court of Hughes County, Oklahoma, stating and alleging in her said petition, that the above mentioned Mehaley Watson died in Hughes County, Oklahoma, instead of in Okfuskee County, Oklahoma; that upon said petition, and upon the sworn testimony offered in support thereof, the said deed was by the County Court of Hughes County, Oklahoma duly approved on said 22nd day of March, 1909.

The Court finds that since the approval of said deed by the County Court of Hughes County, Oklahoma, that these petitioners have learned that Mehaley Watson died in Okfuskee County, Oklahoma, and not Hughes County, Oklahoma, and that they present said deed, together with their petition herein mentioned to this Court, asking that said deed be by this Court approved and the sale confirmed.

The Court finds that there has been *a* additional consideration paid to said grantees amounting to \$2,000.00, which the Court finds has been paid to them on this date in money.

The Court also finds that said consideration is reasonable, fair and just and that it is to the best interest of all parties concerned that said deed be approved and the sale ratified and confirmed.

It is therefore, hereby considered, ordered, adjudged and decreed by this Court that said warranty deed bearing date of March 22nd, 1909, executed by Hannah Canard to B. O. Sims, and conveying to the said B. O. Sims the real estate herein mentioned, be and the same is hereby in all things ratified, approved and confirmed.

Witness my hand and official seal, on this the 17th day of June, 1913. (Seal) A. P. Smith, County Judge of Okfuskee County, Oklahoma.

Filed June 17, 1913. Natt D. Dossey, Clerk County Court.

(Note, Lipscomb: Taken from pages 384 and 385 of record for approval of Indian Lands No. 2, County Court, Okfuskee County.)

Plaintiff's Exhibit No. 6.

In the United States District Court for the Eastern District of Oklahoma. W. A. Kunkle, Complainant v. Santa Watson, et al., Defendants. No. 2154.

STIPULATION.

It is stipulated and agreed between counsel for the complainant and cross-defendant, W. A. Kunkle, counsel for cross-defendant, The Prairie Oil & Gas Company, and counsel for the defendants and cross-complainants, Hannah Canard Barnett and Tucker K. Barnett, as follows:

1.

That upon the trial hereof the Court may consider that the following deeds of conveyance were made, executed, acknowledged, delivered and recorded as alleged in the amended bill of complaint of the complainant, W. A. Kunkle:

Deed dated October 25, 1909, by B. O. Sims and Luella Sims to Clyde Brannan.

Deed dated April 1, 1912 by Clyde Brannan and Luvenia Brannan to F. L. Berrian, W. A. Davis, J. A. Abell, H. G. Cheney, R. J. Riner, John Jelinek, and A. F. Vandersall.

Deed dated May 1, 1912, by said Berrian, Davis, Abell, Cheney, Rinor, Jelinek and Vandersall to W. C. Nelson.

Deed dated July 15, 1912, by said Jelinek and Della Jelinek, his wife, to Clyde Brannan and Louvenia Brannan.

Deed dated July 9, 1912 by A. F. Vandersall to H. G. Cheney.

Deed dated September 26, 1912, by H. G. Cheney to R. S. Litchfield.

Deed dated September 26, 1912, by Clyde Brannan and Luvenia Brannan to said Litchfield.

Deed dated September 26, 1912, by F. L. Berrian to R. S. Litchfield.

Deed dated September 26, 1912, by W. A. Davis to R. S. Litchfield.

Deed dated September 26, 1912, by J. J. Riner to R. S. Litchfield.

Deed dated September 26, 1912, by J. A. Abell to R. S. Litchfield.

Deed dated October 1, 1912, by R. S. Litchfield and Mary L. Litchfield to H. G. Cheney.

Deed dated February 14, 1913, by W. C. Nelson to R. S. Litchfield.

Deed dated March 25, 1913, by H. G. Cheney to R. S. Litchfield.

Deed dated June 17, 1913, by B. O. Sims and Luella Sims to R. S. Litchfield.

Deed dated October 29, 1913, by R. S. Litchfield and Mary H. Litchfield, his wife, to H. G. Cheney.

Deed dated October 29, 1913, by R. S. Litchfield and Mary H. Litchfield, his wife, to H. G. Cheney.

Deed dated November 1, 1913, to R. S. Litchfield and Mary H. Litchfield, his wife, to T. J. Booth.

2.

It is further stipulated and agreed that upon the trial hereof the complainant may offer this stipulation to establish that the deeds referred to above were made, executed, acknowledged, delivered and recorded as alleged in complain-

ant's amended bill of complaint, and that the Court, upon such order, may consider the execution, acknowledgment, delivery and recording of such deeds, as alleged in said amended bill of complaint as established by competent evidence.

That the deeds referred to above are the mesne conveyances, or attempted conveyances, referred to in the joint and several answers and cross-bills of Tucker K. Barnett, and Hannah Canard Barnett, and upon the trial hereof, and in support of the allegations of said paragraph the defendants and cross-complainants, Hannah Canard Barnett and Tucker K. Barnett, may be considered as offered to establish that said mesne conveyances were made, executed, acknowledged, delivered and recorded as alleged in complainant's amended bill of complaint, and upon such offer the Court may consider as established by competent evidence that said mesne conveyances, or attempted mesne conveyances, were made, executed, acknowledged, delivered and recorded as alleged in complainant's amended bill of complaint.

Jas. A. Veasey,
J. B. Bateman,
West, Sherman,
Davidson & Moore
Attorneys for Complainant.

Louis C. Lawson,
Malcolm E. Rosser,
Francis Stewart,
Attorneys for Defendants.

West, Sherman,
Davidson & Moore,
Attorneys for The Prairie
Oil & Gas Company.

Endorsed on back: No. 2154. In the United States District Court for the Eastern District of Oklahoma. W. A. Kunckle, Complainant, v. Santa Watson, et al., Defendants. Stipulation.

Plaintiff's Exhibit No. 7.

QUIT CLAIM DEED.

This Indenture, Made this 17th day of June, A. D. 1913, between B. O. Sims and Luella Sims, his wife, of the first part, and R. S. Litchfield, of the second part, Witnesseth That the said party of the first part in consideration of the sum of One Dollar and other good and valuable considerations, Dollars, to them paid, the receipt whereof is hereby acknowledged, have

hereby remised, released, conveyed and quit claimed, and by these presents do quit claim unto the said party of the second part, and to his heirs and assigns forever, all their right, title, interest, estate, claim and demand, both at law and in equity, or, in and to all the following property, to-wit:

The North Half ($N\frac{1}{2}$) of the North Half ($N\frac{1}{2}$) of Section Twenty-one (21), Township Seventeen (17) North, Range Seven (7) East of the Indian Base and Meridian, in Creek County, Oklahoma.

(The grantors herein specifically covenants and agrees to and with the grantee herein that no part of the above described land is now or ever has been a part of their homestead.)

together with all and singular the hereditaments and appurtenances thereunto belonging.

To Have and To Hold, The above described premises unto the said R. S. Litchfield, heirs and assigns, so neither they, the said B. O. Sims and Luella Sims, his wife, or any person in their name or behalf, shall or will hereafter claim or demand any right or title to the said premises or any part thereof; but they and every one of them shall be excluded and forever barred.

In Witness Whereof, The said party of the first part has hereunto set their hands and seal the day and year first above written.

R. O. Sims,
Luella Sims.

State of Oklahoma, Okfuskee County, ss:

On this 17th day of June, 1913, before me the undersigned, a Notary Public within and for said County and State, personally appears, B. O. Sims and Luella Sims, his wife, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and seal June 17, the day and year above set forth. Hilton B. Douglas, Notary Public. My commission expires June 14, 1914. (Seal).

Endorsed on back as follows, to-wit: State of Oklahoma, County of Creek, ss: This instrument was filed for record in the Register of Deeds office of the County and State aforesaid on the 18 day of June, 1913, at 10 o'clock A. M. and recorded in Book 91 of..... on page 193. Huber Hughes. R. S. Litchfield, Independence, Ks.

Plaintiff's Exhibit No. 8.

SPECIAL WARRANTY DEED.

Know All Men by These Presents That R. S. Litchfield and Mary H. Litchfield, his wife, of Independence, Kansas, and Thomas J. Booth and Laura C. Booth, his wife, of Independence, Kansas, and H. G. Cheney and Ella K. Cheney, his wife, of Nowata, Okla., in consideration of the sum of One Dollar and other good and valuable considerations in hand paid, the receipt of which is hereby acknowledged do hereby grant, bargain, sell and convey unto W. A. Kunkle of Bluffton, Indiana, the following described real property and premises, situated in Creek County, State of Oklahoma, to-wit:

North Half ($N\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) and the North Half ($N\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Twenty-one (21), Township Seventeen (17) North, Range Seven (7) East, of the Indian Base and Meridian;

And the South Half ($S\frac{1}{2}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section Twenty-one (21) and the West Half ($W\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Twenty-two (22), Township Seventeen (17) North, Range Seven (7) East of the Indian Base and Meridian,

Together with all improvements thereon and the appurtenances thereto belonging, and warrants the title to the same from and against the lawful claims of all persons claiming by, through or under them.

To have and to hold the said described premises unto said W. A. Kunkel, his heirs and assigns, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and incumbrances of whatsoever nature.

Signed, sealed and delivered this 6th day of May, 1914.

R. S. Litchfield,
Mary H. Litchfield,
Thomas J. Booth,
Laura C. Booth,
H. C. Cheney,
Ella K. Cheney.

State of Kansas, County of Montgomery, ss: Before me, a Notary Public in and for the County and State aforesaid, on this 6th day of May, 1914, personally appeared R. S. Litchfield and Mary H. Litchfield, his wife, to me known to be the identical persons who executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written. (Seal) R. J. Reinke, Jr., Notary Public. My commission expires March 31, 1918.

State of Kansas, County of Montgomery, ss: Before me, a Notary Public in and for the County and State aforesaid, on this 6th day of May, 1914, personally appeared Thomas J. Booth and Laura C. Booth, his wife, to me known to be the identical persons who executed the within and foregoing instrument, and they acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written. (Seal) R. J. Reinke, Jr., Notary Public. My commission expires March 31, 1918.

State of Oklahoma, County of Nowata, ss: Before me, a Notary Public, in and for said County and State, on this 6th day of May, 1914, personally appeared H. G. Cheney and Ella K. Cheney, his wife, to me known to be the identical persons who executed the within and foregoing instrument and they acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written. (Seal) J. Wood Glass, Notary Public. My commission expires Feb. 18th, 1915.

Endorsed on back as follows, to-wit: 10498. Special Warranty Deed. R. S. Litchfield and Mary H. Litchfield, Thomas J. Booth and Laura C. Booth, and H. G. Cheney and Ella K. Cheney to W. A. Kunkel. State of Oklahoma, County of Creek. This instrument was filed in my office for record on the 13th day of May, A. D. 1914 at 2 o'clock P. M. and duly received in book 99 at page 454. Huber Hughes, Recorder of Deeds.

Plaintiff's Exhibit No. 9.

Certificate of True Copy.

I, Gus L. Corey, County Clerk of Creek County, State of Oklahoma, do hereby certify that the foregoing is a true copy of General Warranty Deed from R. S. Litchfield and Mary H. Litchfield, et al., to W. A. Kunkel, as the same appears on the records of this office. Filed 22nd day of January, 1915, at 8 o'clock A. M. and recorded in volume 106, at page 103.

Witness my hand and seal at Sapulpa, Creek County, Oklahoma, this, the 15th day of February, 1915. (Seal) Gus

L. Corey, County Clerk, by Deputy.
(10c Revenue Stamp.)

General Warranty Deed. No. 14933.

Know All Men by These Presents: That R. S. Litchfield and Mary H. Litchfield, his wife, of Independence, Kansas, and Thomas J. Booth and Laura C. Booth, his wife, of Independence, Kansas, and H. G. Cheney and Ella K. Cheney, his wife, of Nowata, Oklahoma, in consideration of the sum of One Dollar and other good and valuable considerations, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto W. A. Kunkel, of Bluffton, Indiana, the following described real property and premises, situated in Creek County, State of Oklahoma, to-wit:

The North Half of the Northeast Quarter (N2 of NE4) and the North Half of the Northwest Quarter (N2 of NW 4) of Section 21, Township 17 N., Range 7 E., and the South Half of the Northeast Quarter (S2 of NE4) of Section 21, and the West Half of the Northwest Quarter of Section 22, all in Township 17 N., Range 7 E., and containing 320 acres in all,

together with all the improvements thereon and the appurtenances thereto belonging, and warrant the title to the same.

To Have and to Hold said described premises unto the said W. A. Kunkel, his heirs and assigns forever, free, clear and discharged of and from all former grants, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature.

Signed and delivered this 12th day of May, 1914.

R. S. Litchfield,
Mary H. Litchfield,
Thomas J. Booth,
Laura C. Booth,
H. G. Cheney.
Ella K. Cheney.

State of Kansas, County of Montgomery, ss: On this 12th day of May, 1914, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared R. S. Litchfield and Mary H. Litchfield, his wife, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal. (Seal) R. J. Reinke,
Jr., Notary Public. My commission expires March 31, 1918.

State of Kansas, County of Montgomery, ss: On this 12th day of May, 1914, before me the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared Thomas J. Booth, and Laura C. Booth, his wife, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal. (Seal) R. J. Reinke,
Jr., Notary Public. My commission expires March 31, 1918.

Plaintiff's Exhibit No. 9-A.

A G R E E M E N T .

Whereas, Under date of May 6th, 1914, a certain Special Warranty Deed was made and executed by R. S. Litchfield and Mary H. Litchfield, his wife, and Thomas J. Booth and Laura C. Booth, his wife, and H. G. Cheney and Ella K. Cheney, his wife, grantors to W. A. Kunkel, grantees, conveying unto said W. A. Kunkel, his heirs and assigns, the following described lands situate in the county of Creek and State of Oklahoma, to-wit:

The North Half of the Northeast Quarter ($N\frac{1}{2}$ of NE $\frac{1}{4}$) and the North Half of the Northwest Quarter ($N\frac{1}{4}$ of NW $\frac{1}{4}$) of Section 21, Township 17 N., Range 7 E., and The South Half of the Northeast Quarter ($S\frac{1}{2}$ of NE $\frac{1}{4}$) of Section 21, and the West Half of the Northwest Quarter of Section 22, Township 17 N., Range 7 E., and containing 320 acres in all:

Whereas, on the date aforesaid, R. S. Litchfield, for himself and for those interested with him, R. D. Wallace, V. A. Hays, W. H. Tippett, T. J. Booth and F. L. Sawyer, assigned all of their right, title, claim and interest in and to the oil and gas rights on the aforesaid property to the said W. A. Kunkel.

Therefore, for the considerations expressed in said deed, the undersigned grantors and assignors in said deed, and the above assignors of the oil and gas rights above indicated, for themselves, their heirs, executors and administrators, do hereby severally warrant the title to said lands, to the extent of the respective interests conveyed by each, as the same may appear, to the said grantees, his heirs and assigns, against them, the said grantors and assignors, their heirs, executors

or administrators, and against all and every person or persons whomsoever, lawfully claiming or to claim the same.

The undersigned grantors and assignors also agree for themselves, their heirs, executors or administrators, to use their best efforts to secure the execution and delivery of a general warranty deed from all of the grantors and assignors first herein named, conveying said lands to said grantee, his heirs and assigns, within 90 days from this date.

Executed this 12th day of May, 1914.

R. L. Litchfield,
Thos. J. Booth,
H. G. Cheney,
R. D. Wallace,
W. H. Tippett,
F. L. Sawyer,
V. A. Hays.

ASSIGNMENT.

For and in consideration of the sum of one dollar and other valuable consideration to me in hand paid, the receipt whereof is hereby acknowledged, I, the undersigned, hereby assign, set over and deliver to The Prairie Oil & Gas Company, a corporation organized and existing under the laws of the State of Kansas, the within contract, together with all guarantees, rights and benefits accruing to me thereunder.

Witness my hand this 15th day of April, 1916.

W. A. KUNKEL.

Defendant's Exhibit No. 1.

State of Oklahoma, Okfuskee County, ss: In the County Court.
In the Matter of the Approval of a Deed from Hannah
Canard Barnett, and Tucker K. Barnett to B. O. Sims.

Comes now Hannah Canard Barnett and Tucker K. Barnett and respectfully state to the Court that heretofore, to-wit: On the 22nd day of March, 1909, your petitioners filed in the County Court of Hughes County, Oklahoma their certain petition to have a *warranty* deed, which was executed by Hannah Canard, now Hannah Canard Barnett, to B. O. Sims, approved as by law required, and that said County Court duly approved the said deed.

Your petitioners further state that said deed conveyed the

North Half ($N\frac{1}{2}$) of the North Half ($N\frac{1}{2}$) of Section Twenty-one (21) Township Seventeen (17) North, Range

Seven (7) East of the Indian Base and Meridian, Creek County, Oklahoma,

and that at the time said deed was approved, the consideration passed from the grantee to the grantor of Five Hundred Dollars.

Your petitioners further state that at the time said deed was approved they represented to the Court and thought at that time that the allottee Mehaley Watson died in Hughes County, Oklahoma, but after a more fully investigation, it was learned that said Mehaley Watson was domiciled and at the time of her death resided in Okfuskee County.

Your petitioners further state that there is an additional consideration to be paid and that said sum is Two Thousand (\$2,000.00) Dollars, to have a deed which was originally approved by the County Court of Hughes County, Oklahoma, approved by this Court.

That there was allotted to Mehaley Watson the North Half ($N\frac{1}{2}$) of the North Half ($N\frac{1}{2}$) of Section Twenty-one (21), Township Seventeen (17) North, Range Seven (7) East, Creek County, Oklahoma,

and that since said allotment, Mehaley Watson died some time in 1908, age about four years. That she was an illegitimate child and left as her sole and only heir her mother, Hannah Canard Barnett. That Mehaley Watson left no brothers, sisters or father, but only her mother, Hannah Canard Barnett.

Your petitioners further state that on account of the allottee being a full blood Indian, a minor, there is no necessity for an administrator and there is no administration pending on the estate.

That a deed executed on the 22nd day of March, 1909, to B. O. Sims and duly acknowledged before C. W. Miller, a Notary Public, on said day, and approved March 22nd, 1909, by P. W. Gardner, County Judge of Hughes County, Oklahoma, for a consideration of Five Hundred Dollars and a further consideration to be paid Hannah Canard Barnett of Two Thousand Dollars, your petitioners ask that said deed be approved by this Court. That said consideration is fair and adequate and same has been paid to your petitioners.

Wherefore, your petitioners pray that said deed executed aforesaid be approved.

Crump & Skinner,
Attorneys for Petitioner.

State of Oklahoma, Okfuskee County, ss: Hannah Canard Barnett and Tucker K. Barnett, being duly sworn, upon

oath, state that they have read the above and foregoing petition and know the contents thereof and the facts therein stated are true.

Hannah Canard Barnett,
Tucker K. Barnett.

Subscribed and sworn to before me on this the 26th day of May, 1913. (Seal) L. T. Newlon, Notary Public. My commission expires May 26, 1914.

I have examined the facts herein and ask that deed be approved. G. C. Crump. May 26, 1913.

Filed June 17, 1913. Natt D. Dossey, Clerk County Court
By..... No. 755.

Endorsed on back: Petition for approval Hannah to B. O. Sims.

Certificate of True Copy County Court.

State of Oklahoma, County of Okfuskee, ss: I, M. C. Jones, Court Clerk in and for the County aforesaid, do hereby certify the following to be a full, true and correct copy of the Petition for Approval of Deed from Hannah Canard to B. O. Sims in full blood Indian approval case No. 755, as the same appears on file and of record in my office.

Witness my hand and seal of said Court, this 20 day of November, 1917. (Seal) M. C. Jones, Court Clerk, by Edith Harman, Deputy.

Defendant's Exhibit No. 3.

No. 755.

In the County Court of Okfuskee County, Oklahoma. In the Matter of the Approval of a Deed from Full-Blood Heirs of Mehaley Watson, Deceased.

ORDER.

On this the 17 day of June, 1913, came on to be heard the petition of Hannah Canard Barnett and Tucker K. Barnett asking the approval of a warranty deed, heretofore made and executed by the said Hannah Canard Barnett to B. O. Sims, the petitioners appearing in person and by their attorney, Geo. C. Crump, and the grantee, B. O. Sims appearing by attorney, J. B. Patterson, the Court proceeds to hear said petition upon the examination of the same, and upon the oral and documentary evidence adduced in support thereof. From this the Court finds that Mehaley Watson was a full-blood Creek Indian enrolled as such on the final rolls of the Creek

Tribe, opposite to Creek minor roll number 143; that the said Mehaley Watson was entitled to participate in the final distribution of the lands of the Creek Tribe, and there was allotted and deeded to her, as her share of said lands, the following real estate in Creek County, Oklahoma, to-wit:

The North Half ($N\frac{1}{2}$) of the North Half ($N\frac{1}{2}$) of Section Twenty-one (21) Township Seventeen (17) North, Range Seven (7) East.

That the said Mehaley Watson died in what is now Okfuskee County, Oklahoma, and of which said County she was a resident at the time of her death, at some time during the month of October, 1908, the exact day of which month, your petitioners do now not know; that she died intestate and without issue, leaving surviving her as her sole and only heir at law, her mother, Hannah Canard, whose name is now Hannah Canard Barnett, and who is one of the petitioners herein, that said Hannah Canard Barnett is now an adult of full lawful age; that she is a full-blood Creek Indian and her name appears upon the rolls of said Tribe, opposite to number 4574; that upon the death of the said Mehaley Watson, her mother, Hannah Canard, became the absolute owner in fee simple of the real estate above described.

The Court finds that on the 22nd day of March, 1909, the said Hannah Canard, made, executed and delivered a warranty deed conveying the real estate above mentioned to B. O. Sims, and on that said day, she presented said deed, together with her petition, asking for the approval thereof, to the County Court of Hughes County, Oklahoma, stating and alleging in her said petition, that the above mentioned Mehaley Watson died in Hughes County, Oklahoma, instead of Okfuskee County, Oklahoma; that upon said petition, and upon the sworn testimony offered in support thereof, the said deed was by the County Court of Hughes County, Oklahoma, duly approved on said 22nd day of March, 1909.

The Court finds that since the approval of said deed by the County Court, of Hughes County, Oklahoma, that the petitioners have learned that Mehaley Watson died in Okfuskee County, Oklahoma, and not Hughes County, Oklahoma, and that they present said deed, together with their petition herein mentioned to this Court, asking that said deed be by this Court approved and the sale confirmed.

The Court finds that there has been an additional consideration paid to said grantees amounting to \$2,000.00, which the Court finds has been paid to them on this date in money. The Court also finds that said consideration is reasonable, fair and just and that it is to the best interest of all parties

concerned, that said deed be approved and the sale ratified and confirmed.

It is therefore hereby considered, ordered, adjudged and decreed by this Court that said warranty deed bearing date of March 22nd, 1909, executed by Hannah Canard to B. O. Sims, and conveying to the said B. O. Sims, the real estate herein mentioned, be and the same is hereby in all things ratified, approved and confirmed.

Witness my hand and official seal, on this the 17th day of May, 1913. (Seal)

A. P. SMITH,
County Judge of Okfuskee County, Oklahoma.

Filed June 17, 1913. Natt D. Dossey, Clerk County Court.
Recorded on pages 384 and 385, Record for Approval of Indian Lands, No. 2.

Certificate of True Copy County Court.

State of Oklahoma, County of Okfuskee. I, M. C. Jones, Court Clerk in and for the County aforesaid, do hereby certify the following to be a full, true and complete copy of the Order approving warranty deed from Hannah Canard Barnett et al. to B. O. Sims, in full-blood approval case No. 755, as the same appears of record in my office.

Witness my hand and seal of said Court, this 28th day of November, 1917. (Seal) M. C. Jones, Court Clerk, By C. G. Eskridge, Deputy.

Defendant's Exhibit No. 5.

2593.

Oil and Gas Lease.

Hannah Canard Barnett, et con. to Geo. C. Crump.

This Agreement, Made and entered into in duplicate the 27th day of March A. D. 1913, by and between Hannah Canard Barnett, joined by her husband, Tucker K. Barnett, of Okfuskee County, Oklahoma, parties of the first part, lessors, and Geo. C. Crump, of Hughes County, Oklahoma, party of the second part, lessee;

Witnesseth: That the said party of the first part, for and in consideration of the sum of Eleven Hundred and Fifty Dollars, paid and to be paid, as follows: \$250.00 cash in hand, receipt hereby acknowledged, and \$900.00 to be paid at time and on conditions expressed in written contract of this date between the parties hereto and the further considerations hereinafter, recited and of the covenants and agreements,

hereinafter contained on the part of the party of the second part, to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said second party, his heirs, successors or assigns for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines and of building tanks, powers, stations and structures, thereon to produce and take care of said products all that certain tract of land, situated in the County of Creek, State of Oklahoma, described as follows, to-wit:

Northeast Quarter of Northeast Quarter and Northeast Quarter of Northwest Quarter of Section 21, Township 17 North, and Range 7 East, I. B. & M. containing 80 acres more or less;

The further considerations above mentioned are the employment and services of said Geo. C. Crump as per the terms and conditions of the written contract of said parties hereto of this date above referred to, which contract is herewith made a part hereof.

The \$900.00 consideration above referred to is to be paid to Hannah Canard Barnett, she being the surviving lawful mother and sole heir-at-law, of Mehaley Watson, deceased allottee of the property above described.

Wherever the words parties, party, lessors, lessor, lessees or lessee, or either of them appear in this instrument shall be considered as expressing the singular or plural as may be proper.

It is agreed that this lease shall remain in force for the term of 99 years from this date and as long thereafter as oil or gas or either of them is produced therefrom by the party of the second part, its successors or assigns.

In consideration of the premises the said party of the second part, covenants and agrees;

That there shall be no assignment of this contract or any rights thereunder until the title to the allotment, of Mehaley Watson, deceased, shall have been quieted as per the terms and conditions of the written contract hereinabove referred to.

Second party shall pay for damages caused by him to growing crops on said land.

The party of the second part shall have the right at any time to remove all machinery and fixtures, placed on said premises, including the right to draw and remove casing.

The party of the second part shall not be bound by any change in the ownership of said land until duly notified of

any change either by notice in writing duly signed by the parties of the instrument of conveyance or by the receipt of the original instrument of conveyance or a duly certified copy thereof.

All payments which may fall under this lease may be made directly to the lessor or deposited to the credit of said Hannah Canard Barnett, in *Framer's State Bank*, Holdenville, Okla.

The party of the second part, his heirs, successors or assigns shall have the right at any time on the payment of One Dollar to the party of the first part, their heirs or assigns, to surrender this lease for cancellation after which all payments and liabilities, thereafter to accrue under and by virtue of its terms shall cease and determine; provided, this surrender clause and the option therein reserved to the lessee shall cease and become absolutely inoperative immediately, and concurrently with the institution of any suit in any court of law or equity by the lessee to enforce this lease, or any of its terms, or to recover possession of the leased land or any part thereof against or from the lessor, their heirs, executors, administrators, successors, or assigns, or any other person or persons.

All covenants and agreements herein set forth between the parties hereto shall extend to their heirs, executors, administrators, successors or assigns.

Witness the following signatures and seals.

HANNAH CANARD BARNETT, (Seal)

TUCKER K. BARNETT, (Seal)

GEO. C. CRUMP, (Seal)

Examined and approved by County Court of Okfuskee County, Oklahoma, on this 27th day March, 1913. (C. C. Seal)
A. P. Smith, Judge of said County Court.

State of Oklahoma, Okfuskee County, ss: On this 27th day of March, 1913, before me, the undersigned, a Notary Public within and for the County and State aforesaid, personally appeared Hannah Canard Barnett and Tucker K. Barnett, her husband, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal, the day and year last above written. (Seal) B. F. Herman, Notary Public. My commission expires July 12, 1913.

State of Oklahoma, County of Creek, ss: This instrument was filed in my office for record on the 2nd day of April, A. D. 1913, at 10 o'clock A. M. and duly recorded in book 89 at page 244. Huber Hughes, Register of Deeds.

Certificate of True Copy.

State of Oklahoma, County of Creek, ss: I, C. K. Maddox, Clerk of Creek County, State of Oklahoma, do hereby certify that the foregoing is a true copy of 2593 Oil and Gas Lease Hannah Canard Barnett, to Geo. C. Crump, as the same appears on the records of this office. Filed 2nd day of April, 1913 at 10 o'clock A. M. and recorded in volume 89 at page 244.

Witness my hand and seal at Sapulpa, Creek County, Oklahoma, this the 2nd day of December, 1919. (Seal) C. K. Maddox, County Clerk.

Defendant's Exhibit No. 6.

In the County Court of Okfuskee County, Oklahoma, at Okemah. In the Matter of Approval of Oil and Gas Lease and Contract from Hannah Canard Barnett and husband, Tucker K. Barnett, to Geo. C. Crump, Affecting Allotment of Mehaley Watson, Deceased, in Creek County, Oklahoma.

**ORDER OF APPROVAL OF OIL AND GAS LEASE
AND CONTRACT.**

Now on this 27th day of March, 1913, the above entitled matter came duly and regularly on for hearing in the County Court of Okfuskee County, Oklahoma, at Okemah, on the verified petition of Hannah Canard Barnett and Tucker K. Barnett, her husband, praying for the Court's approval and confirmation of a certain oil and gas lease and written contract of this date made by petitioners to and with Geo. C. Crump, and after a full hearing in the premises, and the Court being fully advised, informed and satisfied in the premises, the Court finds:

That Mehaley Watson was a Creek Indian citizen, enrolled opposite minor Creek roll No. 143; that as such citizen she had allotted to her as her proportionate share of the lands of the Creek Nation of Indians, the following described real estate and premises, now lying and situate in Creek County, State of Oklahoma, to-wit:

The North Half of the North Half of Section 21, Township 17 North, and Range 7 East, I. B. & M.; that said

Mehaley Watson is now dead, that she died at her usual place of residence in Okfuskee County, Oklahoma, on the 14th day of November, 1908, only about two years of age, intestate and without issue, and leaving surviving her as her sole heir-at-law, her mother, petitioner, Hannah Canard Barnett, said Mehaley Watson having been born out of lawful wedlock; and that this court is the court having jurisdiction of the settlement of the estate of said Mehaley Watson:

That upon the death of said Mehaley Watson as aforesaid, she was the owner in fee of all of said allotment above described, and that thereupon the same descended unto and was inherited in fee by her said mother, petitioner, Hannah Canard Barnett, as her sole heir-at-law;

That on the 27th day of March, 1913, petitioner Hannah Canard Barnett, joined by her husband, Tucker K. Barnett, executed to Geo. C. Crump, an oil and gas lease on the

Northeast Quarter of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section 21, Township 17 North and Range 7 East in Creek County, Oklahoma,

for a period of 99 years, for the consideration of \$1150.00 paid and to be paid as follows: \$250.00 cash and \$900.00 to be paid at the time and as specified in a written contract of even date between the petitioners and said Crump, and the further consideration of the employment and services of said Crump as specified in said written contract, true and correct copies of which lease and contract are on file as Exhibits A and B, respectively, to the petition herein, and the originals of which are now presented to the Court for examination and approval;

That the considerations of said oil and gas lease and said written contract are fair and reasonable to said petitioners and each of them and that it is to the best interest, benefit and advantage of said petitioners and each of them, that said oil and gas lease and written contract and each of them be fully approved and confirmed by the Court, the cash consideration of \$250.00 expressed in said lease being now paid by said Crump, to petitioner, Hannah Canard Barnett in open court.

It is therefore hereby ordered, adjudged and decreed by the Court that the aforesaid oil and gas lease and written contract and each of them, be and the same are hereby fully approved and confirmed by the Court.

Witness Hon. A. P. Smith, Judge of the County Court of Okfuskee County, State of Oklahoma, and the official seal

thereof, in open court, at Okemah, Oklahoma, on this the 27th day of March, 1913.

A. P. SMITH,
Judge of the County Court of
Okfuskee County, State of Oklahoma.

State of Oklahoma, Okfuskee County, ss: I, Natt D. Dossey, Clerk of the County Court of Okfuskee County, Oklahoma, do hereby certify that the within and foregoing is a full, true, correct and complete copy of the original of an order made and entered by and in the County Court of said County, at Okemah, Oklahoma, on the 27th day of March, 1913, approving oil and gas lease and contract from Hannah Canard Barnett, and husband, Tucker K. Barnett, to Geo. C. Crump as appears from said original now on file and of record in my office.

Witness my hand and official seal the 27th day of March, 1913. (C. C. Seal) Natt D. Dossey, Clerk of the County Court.

State of Oklahoma, County of Creek, ss: This instrument was filed in my office for record on the 2nd day of April, 1913, at 10 o'clock A. M. and duly recorded in Book 89 at page 243. Huber Hughes, Register of Deeds.

Certificate of True Copy.

State of Oklahoma, County of Creek, ss: I, C. K. Maddox, County Clerk of Creek County, State of Oklahoma, do hereby certify that the foregoing is a true copy of Order of Approval of Oil and Gas Lease and Contract from A. P. SMITH, Judge of the Co. Court, Okfuskee Co., to Hannah Canard Barnett, et al., as the same appears on the records of this office. Filed 2nd day of April, 1913, at 10 o'clock A. M. and recorded in volume 89 at page 243.

Witness my hand and seal at Sapulpa, Creek County, Oklahoma, this the 14th day of January, 1921. (Seal) C. K. Maddox, County Clerk.

Prairie Oil & Gas Company Exhibit No. 1.

Agreement, Made and entered into the 12th day of May, A. D. 1914, by and between W. A. Kunkel, of Bluffton, Indiana, party of the first part, lessor, and the Prairie Oil & Gas Company, a Kansas corporation, party of the second part, lessee.

Witnesseth, That the party of the first part, for and in consideration of the sum of One Dollar to him in hand well and truly paid by the said party of the second part, the receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of the party

of the second part to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said second party, its successors or assigns, for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, and of building tanks, powers, stations and structures, thereon to produce and take care of said products, all that certain tract of land situate in the County of Creek, State of Oklahoma, described as follows, to-wit:

The North Half of the Northeast Quarter ($\text{N} \frac{1}{2}$ of $\text{NE} \frac{1}{4}$) and the North Half of the Northwest Quarter ($\text{N} \frac{1}{2}$ of $\text{NW} \frac{1}{4}$) of Section 21; and the West Half of the Northwest Quarter of Section 22, Township 17 N. Range 7 E. and containing 320 acres, more or less.

It is agreed that this lease shall remain in force for the term of five years from this date, and as long thereafter as oil or gas or either of them is produced therefrom by the party of the second part, its successors or assigns.

In consideration of the premises the said party of the second part covenants and agrees:

1st. To deliver to the credit of the first party, his heirs, or assigns, free of cost, in the pipe line to which it may connect its wells, the equal one-eighth part of all oil produced and saved from the leased premises.

2nd. To pay to the first party, Two Hundred Fifty Dollars each year in advance, for the gas from each well where gas only is found, while the same is being used off the premises, and the first party to have gas free of cost from any such well for 2 stoves and 4 inside lights in the principal dwelling house on said land during the same time by making his own connections with the well.

3. To pay to first party for gas produced from any oil well and used off the premises at the rate of $1/8$ of the gross proceeds, for the time during which such gas shall be so used, said payments to be made each three months in advance.

The party of the second part shall have the right to use, free of cost, gas, oil and water produced on said land for its operation thereon except water from wells of first party.

When requested by first party, the second party shall bury its pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn on said premises.

Second party shall pay for damages caused by it, to growing crops on said land.

The party of the second part shall have the right at any time to remove all machinery and fixtures placed on said premises including the right to draw and remove casing.

The party of the second part shall not be bound by any change in the ownership of said land until duly notified of any such change, either by notice in writing duly signed by the parties to the instrument of conveyance, or by the receipt of the original instrument of conveyance or a duly certified copy thereof.

All payments which may fall due under this lease may be made directly to or deposited to credit in

The party of the second part, its successors or assigns shall have the right at any time, on the payment of One and no/100 Dollars to the party of the first part, his heirs or assigns to surrender this lease for cancellation after which all payments and liabilities thereafter to accrue under and by virtue of its terms shall cease and determine; provided, this surrender clause and the option therein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law or equity by the lessee to enforce this lease, or any of its terms, or to recover possession of the leased land, or any part thereof, against or from the lessor, his heirs, executors, administrators, successors or assigns, or any other person or persons. All covenants and agreements herein set forth between the parties hereto shall extend to their successors, heirs, executors, administrators and assigns.

Witness the following signatures and seals.

W. A. Kunkel, (Seal)

The Prairie Oil & Gas Company,

By N. K. Moody, Vice President.

State of Kansas, County of Montgomery, ss: On this the 12th day of May, A. D. 1914, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared W. A. Kunkel in person, who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth. (Seal) W. H. Love, Notary Public. My commission expires July 23, 1917.

Endorsed on back: No. 439. Creek County, Oil and Gas Lease. From W. A. Kunkel to The Prairie Oil & Gas Company. Independence, Kansas. State of Oklahoma, County of Creek. This instrument was filed in my office for record on the 13th day of May, A. D. 1914, at 3 o'clock P. M. and duly

recorded in book 90 at page 355. Huber Hughes, Recorder of Deeds. (Seal).

In the District Court of the United States for the Eastern District of Oklahoma.—W. A. Kunkel, Complainant, vs. Santa Watson, Hannah Canard Barnett, Tucker K. Barnett, and Prairie Oil and Gas Company, a corporation, Defendants.—No. 2154, Equity.

STIPULATION.

It is agreed by and between the parties to the above entitled action that the attached transcript of the stenographer's notes, taken at the trial, except Ex. No. 9, offered at page 30 of manuscript, which should be included, is all the evidence in the above entitled and numbered action and is a true and correct copy of all matters occurring at the trial of the above entitled action.

WEST, SHERMAN,
DAVIDSON & MOORE,

*Attorneys for Plaintiff and the Defendant
Prairie Oil and Gas Company.*

LEWIS C. LAWSON,
CHAS. A. MOON,
FRANCIS STEWART,
MALCOLM E. ROSSER,

*Attorneys for Defendants and Cross-Petitioners,
Tucker K. Barnett and Hannah Canard Barnett.*

In the District Court of the United States for the Eastern District of Oklahoma.—W. A. Kunkel, Complainant, vs. Santa Watson, Hannah Canard Barnett, Tucker K. Barnett and Prairie Oil and Gas Company, a corporation, Defendants.—No. 2154, Equity.

ORDER.

Now on this 5th day of July, A. D. 1921, came on to be considered the statements of Tucker K. Barnett and Hannah Canard Barnett, defendants and cross-petitioners in the above entitled action, of the evidence to be included in the record on appeal in the said case, and the court having examined and considered the same, finds it to be a complete and correct statement of the evidence taken at the trial of said cause in the District Court of the United States for the Eastern District of Oklahoma.

It is therefore considered, ordered and adjudged that the above and foregoing statement of evidence constitutes the entire evidence taken upon the trial and is hereby approved and made a part of the record in this cause for the purposes of appeal.

R. L. WILLIAMS, Judge.

O. K., except as noted in accompanying stipulation.

West, Sherman, Davidson & Moon.

Record so included.

Endorsed: Filed Jul 5, 1921, W. V. McClure, Clerk U. S. District Court.

(Petition for Appeal and Order Allowing Same.)

To the Honorable Robert L. Williams, District Judge:

The above named Hannah Canard Barnett and Tucker K. Barnett, defendants and cross-petitioners in the above entitled action, feeling themselves aggrieved by the decree made and entered in this cause on the day of January, 1921, do hereby appeal from said decree to the Circuit Court of Appeals of the United States for the Eighth Circuit, for the reasons specified in the assignment of errors filed herewith; and they pray that their appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit, sitting at St. Louis, Missouri; and further pray that the proper order concerning the security required of them to perfect their appeal herein be made.

LEWIS C. LAWSON,
MALCOLM E. ROSSER,
FRANCIS STEWART,
CHAS. MOON,

*Solicitors for Defendants and Cross-Petitioners,
Hannah Canard Barnett and Tucker K. Barnett.*

Upon the reading of the above petition, it is ordered that the said appeal be, and the same is, hereby allowed upon giving bond, conditioned as required by law for the payment of the costs of appeal in the sum of Five Hundred (\$500.00) Dollars.

R. L. WILLIAMS, Judge.

Endorsed: Filed Jun 13 1921, W. V. McClure, Clerk U. S. District Court.

ASSIGNMENTS OF ERROR.

Now on this the 27th day of May, A. D. 1921, come the defendants, Hannah Canard Barnett and Tucker K. Barnett, by their solicitors, Lewis C. Lawson, Francis Stewart and Malcolm E. Rosser, and say that the decree entered in the above cause on the 17th day of January, A. D. 1921, is erroneous and unjust to said defendants,

1. Because the court erred in admitting in evidence plaintiff's Exhibit 2, being a certified copy of the warranty deed made by the defendant Hannah Canard Barnett, under her maiden name of Hannah Canard, to B. O. Sims, dated March 22, 1909, together with a copy of the order of county court of Okfuskee County, purporting to approve said deed.
2. Because the court erred in admitting in evidence plaintiff's Exhibit 3, being a certified copy of purported order of approval of the deed from Hannah Canard to B. O. Sims, by the County Court of Okfuskee County.
3. Because the court erred in admitting in evidence page 391 of book known as Land Approval Fee Record No. 1, of the County Court of Okfuskee County, Oklahoma.
4. Because the court erred in admitting in evidence pages 384 and 385 of the book known as Record of Approval of Indian Lands No. 2, of the records of the Court Clerk of Okfuskee County.
5. Because the court erred in admitting in evidence plaintiff's Exhibit 6, being a stipulation admitting the execution and recording of various deeds in plaintiff's purported chain of title.
6. Because the court erred in admitting in evidence plaintiff's Exhibit 8, being a special warranty deed executed May 6, 1914, by R. S. Litchfield and others to the plaintiff.
7. Because the court erred in admitting in evidence plaintiff's Exhibit 9, being a general warranty deed from R. S. Litchfield and others to the plaintiff.
8. Because the court erred in admitting in evidence defendant, Prairie Oil & Gas Company's Exhibit 1, being the original oil and gas lease from the plaintiff to the said Prairie Oil & Gas Company.
9. Because the court erred in holding and deciding that the purported order of the County Judge of Okfuskee County, approving the deed from Hannah Canard to B. O. Sims, was a valid order and a valid and sufficient approval of said deed.

10. Because the court erred in holding and deciding that the County Judge of Okfuskee County was not required to make an order approving said deed in open court but that his purported approval made at his residence in Okemah and not in open court or in the court house, or in chambers, which order was signed by him at his residence and delivered to the clerk at the court house by J. R. Patterson, attorney for R. S. Litchfield, was a valid and sufficient order of approval.

11. Because the court erred in holding and finding that R. S. Litchfield had the right to apply for and obtain the approval of said deed four years after the same was executed and after the grantee in the said deed had sold all of his right and interest in said land.

12. Because the court erred in permitting the plaintiff, W. A. Kunkel, to testify that at the time he paid R. S. Litchfield for the land in controversy, he had no knowledge of the transactions between George Crump and Hannah Canard or between George Crump and R. S. Litchfield, or any of the transactions in the office of the lawyer named Skinner, and had no knowledge of the payment of money to Crump by Litchfield, and had no knowledge of what was done except as shown by the order of approval at the home of Judge Smith on June 17, 1913, and had no notice or knowledge that Hannah Canard Barnett or her husband, Tucker K. Barnett, was asserting or claiming any interest in the land.

13. Because the court erred in permitting the witness, Moody, to testify that at the time the Prairie Oil & Gas Company paid the consideration for the lease on the land in controversy, neither said witness nor the Prairie Oil & Gas Company, had any notice or knowledge of the relationship between Hannah Canard and her attorney, George C. Crump, or the relationship between R. S. Litchfield and George C. Crump, and had no notice that R. S. Litchfield paid any money to George C. Crump in connection with the transaction and had no notice of any transaction testified to by other witnesses relative to what took place with Skinner, said to be the law partner of George C. Crump, and had no notice or knowledge of the payment of money to either Crump or Hannah Canard, or as to what was said or done in the home of Judge Smith, Judge of the County Court of Okfuskee County, June 17, 1913, outside of what was disclosed by the record, and had no notice or knowledge of any claims asserted by Hannah Canard or her husband to the land.

14. Because the court erred in rendering judgment in favor of the plaintiff, W. A. Kunkel, and against the defendants, Hannah Canard Barnett and Tucker K. Barnett.

15. Because the court erred in holding and deciding that the deed from Hannah Canard Barnett, under her maiden name of Hannah Canard, to B. O. Sims, could be lawfully approved June 17, 1913, more than four years after same had been executed and more than four years after the County Court of Hughes County had made an order purporting to approve it.

16. Because the court erred in holding and deciding that the plaintiff, W. A. Kunkel, was an innocent purchaser of the lands in controversy and that he had no notice of the fraud practiced upon the defendant Hannah Canard Barnett by her attorney George C. Crump at the time the consideration was paid to R. S. Litchfield for said land.

17. Because the court erred in holding and finding that the defendant Prairie Oil & Gas Company was an innocent purchaser and holder of the lease upon the lands in controversy in this action, and in holding and deciding that it had no knowledge at the time it paid the consideration for said lease of the fraud practiced upon the defendant Hannah Canard Barnett by her attorney, George C. Crump.

18. Because the court erred in holding and deciding that the deed from Hannah Canard Barnett, under her maiden name of Hannah Canard, to B. O. Sims, executed the 22nd day of March, 1909, two days before patents to the lands in controversy in this action were approved by the secretary, and five days before said patents were recorded, was a valid deed and inured to the benefit of B. O. Sims after said patents were approved and recorded.

Wherefore, said defendants pray that the decree of the court in this action be reversed and that judgment hereby rendered in favor of said defendant, Hannah Canard Barnett, cancelling all the deeds of conveyance through which the plaintiff claims title to said land, which deeds are set forth and described in the cross-petition of these defendants and that the oil and gas lease upon said lands held by the Prairie Oil & Gas Company be cancelled and set aside, and that the said plaintiff and the defendant, Prairie Oil & Gas Company, be required to account to defendant Hannah Canard Barnett for all profits received from said lands, and they further pray for all proper relief.

LEWIS C. LAWSON,
MALCOLM E. ROSSER,
FRANCIS STEWART,

*Attorneys for Defendants, Hannah Canard
Barnett and Tucker K. Barnett.*

Endorsed: Filed Jun 13 1921, W. V. McClure, Clerk U. S. District Court.

(Cost Bond on Appeal.)

Know all men by these presents: That we, Hannah Canard Barnett and Tucker K. Barnett, as Principals, and United States Fidelity and Guaranty Company, of Baltimore, Maryland, as Surety, are held and firmly bound unto W. A. Kunkel and Prairie Oil and Gas Company in the full and just sum of Five Hundred Dollars, to be paid to the said W. A. Kunkel and the Prairie Oil and Gas Company, their heirs, executors, administrators, successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, by these presents.

Whereas, lately at the Special Tulsa Term of the District Court of the United States for the Eastern District of Oklahoma, in a suit depending in said court between W. A. Kunkel, plaintiff, and Hannah Canard Barnett and Tucker K. Barnett, defendants, and Prairie Oil and Gas Company cross-defendant, decree was rendered against the said Hannah Canard Barnett and Tucker K. Barnett, and the said Hannah Canard Barnett and Tucker K. Barnett have obtained an appeal allowed by the said court to reverse the decree in the aforesaid suit, and a citation directed to the said plaintiff and cross-defendant citing and admonishing them to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said Hannah Canard Barnett and Tucker K. Barnett shall prosecute said appeal to effect, and answer all costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed with our seals and dated this 30th day of June, in the year of our Lord one thousand nine hundred twenty-one. United States Fidelity and Guaranty Company,

(Seal) By Wallace Butz, Attorney-in-fact.

Approved by:

United States of America, Eastern District of Oklahoma, ss.

....., as surety on the annexed bond, being duly sworn, deposes and says that he resides at in the County of, in said District; that he is a free-

holder in the county of.....; that he is worth the sum of One Thousand Dollars, over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of real estate.

.....
Subscribed and sworn to before me this.....day of
....., 1921.

.....
Endorsed: Filed Jun 30, 1921, W. V. McClure, Clerk U. S. District Court.

(Citation and Admission of Service.)

United States of America, to W. A. Kunkel and Prairie Oil and Gas Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the Clerk's office of the United States District Court, Eastern District of Oklahoma, wherein Hannah Canard Barnett and Tucker K. Barnett are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Robert L. Williams, Judge of United States District Court, Eastern District of Oklahoma, this 27th day of May, 1921. R. L. WILLIAMS,

*Judge of United States District Court,
Eastern District of Oklahoma.*

Service hereof accepted the 20th day of June, 1921.

WEST, SHERMAN,
DAVIDSON & MOORE,
PRESTON C. WEST,
ROGER S. SHERMAN,
A. A. DAVIDSON,
GREY MOORE,

*Attorneys for W. A. Kunkel and
Prairie Oil and Gas Company.*

(Order of July 14, 1921, Enlarging Time to File Record.)

For satisfactory reasons appearing to the court, it is ordered that the time for filing the record in this cause in the United States Circuit Court of Appeals for the Eighth Circuit, at St. Louis, Missouri, pursuant to the appeal sued out, be and the same is hereby extended until the 27th day of August, A. D. 1921.

R. L. WILLIAMS, Judge.

Endorsed: Filed Jul 14 1921 W. V. McClure Clerk U. S. District Court.

STIPULATION AS TO CONTENTS OF RECORD.

It is hereby agreed and stipulated by and between Preston C. West, Roger Sherman and A. A. Davidson, attorneys for W. A. Kunkel, the plaintiff, and the Prairie Oil and Gas Company, defendant, to the cross-petition of Tucker K. Barnett and Hannah Canard Barnett, and Lewis C. Lawson, Charles A. Moon, Francis Stewart, and Malcolm E. Rosser, attorneys for Tucker K. Barnett and Hannah Canard Barnett, defendants and cross-petitioners, that the record in the above entitled case, on appeal to the United States Circuit Court of Appeals for the Eighth Circuit, shall consist of the following portions of the record in the District Court of the United States for the Eastern District of Oklahoma, and no other, to-wit:

1. Amended Bill of Complaint, with exhibits.
2. Amended Answer and Cross-Complaint of Tucker K. Barnett and Hannah Canard Barnett.
3. All exhibits attached to original answer and Cross-Complaint of Tucker K. Barnett and Hannah Canard Barnett.
4. Separate Answer of W. A. Kunkel to Amended Cross-Bill of complainant, Tucker K. Barnett and Hannah Canard Barnett.
5. Answer of Prairie Oil and Gas Company to Amended Answer and Cross Bill of Complaint of Tucker K. Barnett and Hannah Canard Barnett.
6. Statement of the evidence, including all exhibits not included among exhibits attached to original answer and Cross-Complaint of Tucker K. Barnett and Hannah Canard Barnett.
7. The Deeree of the Court.
8. Petition for Appeal.
9. Assignment of Errors.
10. Order Allowing Appeal.
11. Bond for Costs of Appeal.

12. Stipulation that the evidence be incorporated in the record in the exact words of the witnesses.
13. Order to set out evidence in language of witnesses.
15. Certificate of the Clerk.
14. This Stipulation.

PRESTON C. WEST,
ROGER S. SHERMAN,
A. A. DAVIDSON,
GREY MOORE,

*Attorneys for W. A. Kunkel and
Prairie Oil and Gas Company.*

LEWIS C. LAWSON,
CHAS. A. MOON,
FRANCIS STEWART,
MALCOLM E. ROSSER,

*Attorneys for Tucker K. Barnett
and Hannah Canard Barnett.*

Endorsed: Filed Jun 30 1921, W. V. McClure, Clerk U. S. District Court.

CERTIFICATE OF CLERK.

United States of America, Eastern District of Oklahoma—ss.

I, W. V. McClure, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of W. A. Kunkel vs. Santa Watson, et al., Equity No. 2124, as was ordered by praecipe of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

I further certify that the citation attached hereto, and returned herewith, is the original citation issued in this cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Muskogee, this 18th day of August, 1921.

(Seal)

W. V. McCLURE, *Clerk,*
By WARREN BUTZ, *Deputy.*

And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

(Appearance of Counsel for Appellants.)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5920.

HANNAH CANARD BARNETT et al., Appellants,

vs.

W. A. KUNKEL et al.

The Clerk will enter my appearance as Counsel for the Appellants.

LEWIS C. LAWSON,
Holdenville, Okla.
MALCOLM E. ROSSER,
Muskogee, Okla.
CHARLES A. MOON,
Muskogee, Okla.
FRANCIS STEWART,
Muskogee, Okla.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 23, 1921.

(Appearance of Messrs. West, Sherman, Davidson & Moore and Mr. James A. Veasey as Counsel for Appellees.)

The Clerk will enter my appearance as Counsel for the Appellees.

PRESTON C. WEST.
ROGER S. SHERMAN.
A. A. DAVIDSON.
GREY MOORE.
JAS. A. VEASEY.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 3, 1921.

(Appearance of Mr. J. B. Patterson as Counsel for Appellees.)

The Clerk will enter my appearance as Counsel for the Appellees.

J. B. PATTERSON,
Okemah, Okla.,
Attorney for Mary Litchfield.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 12, 1921.

(Order of Submission.)

December Term, 1921, Thursday, January 19, 1922.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Lewis C. Lawson for appellants, continued by Mr. Preston C. West for appellees and concluded by Mr. Lewis C. Lawson for appellants.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

(Opinion.)

United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1922.

No. 5920.

HANNAH CANARD BARNETT and TUCKER K. BARNETT, Appellants,
vs.

W. A. KUNKEL and PRAIRIE OIL AND GAS COMPANY, a Corporation,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

Mr. Lewis C. Lawson (Mr. Malcolm E. Rosser and Messrs. Stone, Moon & Stewart, were with him on the brief), for appellants.

Mr. Preston C. West (Mr. T. J. Flannelly, Mr. Paul B. Mason, Messrs. West, Sherman, Davidson & Moore and Mr. James A. Veasey, were with him on the brief), for appellees.

Before Carland and Stone, Circuit Judges, and Trieber, District Judge.

STONE, Circuit Judge, delivered the opinion of the Court.

This is a suit in equity by Kunkel and the Prairie Oil and Gas Company against Hannah Barnett and others, to quiet title to a parcel of land which was formerly the allotment of Mahaley Watson, a full blood Creek, who died while a minor. Hannah Barnett, a full blood Creek, was her mother and sole heir. Defendants answered and filed a cross bill praying that title be quieted in Hannah Barnett. At a former trial, an objection was made to evidence in support of the answer and cross bill on the ground that the answer and cross bill did not state sufficient facts. At that time, the court required defendants to make an offer of proof and sustained an objection to that offer. The court then entered a decree for plaintiffs and dismissed the cross bill upon the merits. An appeal from that decree to this court resulted in a reversal (259 Fed. 394) on the

ground that the cross bill stated sufficient facts and directing the trial court to hear the evidence thereon. The case was again tried upon full proofs, resulting in a decree quieting the title in the plaintiffs. From that decree defendants bring this appeal.

Appellants rely here upon 18 assignments of error. Many of these refer to admissions of testimony. These have all been examined and we have found no substantial error therein. Other assignments are directed at the decree itself. The court made no findings of fact and stated no conclusions of law, except the general broad results in the decree, that the plaintiffs had title to the land and that the defendant had no interest therein. The assignments aimed at the decree are sufficient to raise here all questions of law or fact which the court must have found to justify the decree. Some of the issues so raised and here presented were fully settled on the prior appeal. Such are, that the deed to Sims was void because made before the patent for the land issued; that approval of that deed by the county court of Okfuskee County could not be made four years after execution of the deed; that the deed could not be approved by the county judge at his residence. The former appeal settled that the deed could be made before the patent issued; that the deed could be approved at the time it was claimed to have been approved, about four years after the execution of it; and that the approval could be made at the residence of the judge.

In addition to the points which are above disposed of, there remain two, namely, the alleged fraud in securing the conveyance from Hannah Barnett, and the defense that appellees are innocent purchasers. As the trial court made no findings of fact nor stated any conclusions of law we cannot know upon what theory the decision rested. We have, therefore, been compelled to read and study the entire evidence. The claim of fraud is made by appellants and the burden of proof as to that issue was upon them. The fraud alleged was in procuring the approval of the deed by the judge of the county court. The fraud alleged consisted in causing Hannah Barnett to believe that the instrument presented to the court for approval was something other than a deed to the property. In our judgment, the fraud alleged was not only not proven but the substantial weight of the evidence is to the contrary. This view of the issue as to fraud disposes of the case and makes it unnecessary to determine the sufficiency of the defense that the appellees are innocent purchasers.

The decree is Affirmed.

Filed July 29, 1922.

(Decree.)

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1922, Saturday, July 29, 1922.

No. 5920.

HANNAH CANARD BARNETT and TUCKER K. BARNETT, Appellants,
vs.

W. A. KUNKEL and PRAIRIE OIL AND GAS COMPANY, a Corporation.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that W. A. Kunkel and Prairie Oil and Gas Company, a corporation, have and recover against Hannah Canard Barnett and Tucker K. Barnett, the sum of twenty dollars for their costs herein and have execution therefor.

July 29, 1922.

(*Petition for Appeal, Assignment of Errors, and Order Allowing Appeal to Supreme Court U. S.*)

Come now said appellants, Hannah Canard Barnett and Tucker K. Barnett, on this the — day of September, 1922, and feeling themselves aggrieved by said decision of said Circuit Court of Appeals, so rendered on July 29, 1922, do hereby appeal therefrom to said Supreme Court, for the reasons assigned and specified in the assignments of error filed herewith, and pray that such appeal may be allowed, and that a true transcript of the records and proceedings in said cause, with all things concerning the same duly authenticated be sent to said Supreme Court for the purposes of such appeal herein prayed for.

FRANCIS STEWART,
MALCOLM E. ROSSER,
JOSEPH C. STONE,
LEWIS C. LAWSON,
Counsel and Solicitors for said Appellants.

(*Assignment of Errors.*)

Now on this the 12th day of September, 1922, come said appellants Hannah Canard Barnett and Tucker K. Barnett, by their

counsel and solicitors, Lewis C. Lawson, Francis Stewart, Joseph C. Stone, and Malcolm E. Rosser, and present this, their assignment of errors in this appeal, from the decision of the United States Circuit Court of Appeals for the Eighth Circuit, rendered on the 29th day of July, 1922, to the Supreme Court of the United States, and in the above styled and numbered cause, and state that:

In the record and proceedings in said cause, there are manifest errors prejudicial to said appellants, and that said United States Circuit Court of Appeals in said decision, to the prejudice of appellants, erred in this, to-wit:

First. In holding and deciding that the trial court in said cause made no substantial error in admitting the testimony embraced in the eighteen assignments of error, and particularly that part or portion thereof pertaining to the deed to Sims, dated March 22, 1909, and the alleged approval thereon on the 17th day of June, 1913, by the Judge of the County Court of Okfuskee County, State of Oklahoma.

Second. In holding and deciding that said deed could be legally executed by Hannah Canard Barnett on March 22, 1909, before the patents for the said lands were approved by the Secretary and before the said patents were recorded as required by Section 5 of the Act of Congress, approved April 26, 1906, entitled: "An Act to Provide for the Final Disposition of the Affairs of the Five Civilized Tribes in the Indian Territory, and for Other Purposes," and holding and deciding that a deed so executed conveyed title.

Third. In holding and deciding that said deed could be and was legally approved by the County Judge of Okfuskee County on the 17th day of June, 1913, at his home and residence and not in open court; and in holding and deciding that said deed did not have to be approved by the County Court of Okfuskee County, in open court; and in holding and deciding that the purported approval of said deed by the said County Judge at his home was sufficient compliance with the provisions and requirements of Section 9 of the Act of Congress, approved May 27, 1908, entitled: "An Act for the Removal of Restrictions From Part of the Lands of the Allottees of the Five Civilized Tribes, and for Other Purposes."

Fourth. In holding and deciding that "the former appeal settled that * * * the approval could be made at the residence of the judge," and in holding and deciding that the decision rendered upon the former appeal settled or affected the questions here presented or any of them.

Fifth. In holding and deciding that the burden of the proof of fraud alleged in these proceedings rested upon the appellants; and in holding and deciding that "the fraud alleged consisted in causing Hannah Canard Barnett to believe that the instrument presented to the court for approval was something other than a deed to the property"; and that "the fraud alleged was not proven but the substantial weight of the evidence is to the contrary," the record fully

showing that said lands were restricted under said Acts of Congress mentioned in the cross-complaint of appellants; that said appellants were Creek citizens; and that Hannah Canard Barnett was a fullblood Creek Indian and owner of said lands under said acts, and the burden of proof herein is governed by Section 2126 of the Revised Laws of the United States, which is as follows:

"In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership."

Sixth. In holding and deciding that the evidence herein adduced did not show fraud in the procurement of said alleged approval of said deed on the 17th of June, 1913, by the Judge of said County Court at his home and residence, and not in open court or by said Court; and in failing and refusing to hold and decide that said purported approval was procured by fraud thus practiced upon said appellants, said Judge, and against said Acts of Congress, approved May 27, 1908, and April 26, 1906, respectively.

Seventh. In refusing to hold and find that defendant W. A. Kunkel was not an innocent purchaser.

Eighth. In refusing to hold and find that defendant Prairie Oil and Gas Company was not an innocent purchaser.

Wherefore, Appellants pray that said judgment and decision of said United States Circuit Court of Appeals dated the 29th of July, 1922, be reversed, and that the Supreme Court of the United States render such proper judgment or decision herein as may comply with the law and facts in said cause disclosed by the record herein.

FRANCIS STEWART,
MALCOLM E. ROSSER,
JOSEPH C. STONE,
LEWIS C. LAWSON,
Solicitors for Appellants.

(*Order Allowing Appeal.*)

It is hereby ordered that the appeal in the above entitled cause in the United States Circuit Court of Appeals for the Eighth Circuit be, and the same is hereby, allowed as prayed for, this the 18th day of September, 1922, and appeal bond fixed in the sum of \$500.00, to be approved by one of the Judges of this Court.

ROBT. E. LEWIS,
Circuit Judge.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Sep. 18, 1922.

(*Bond on Appeal to Supreme Court U. S.*)

Know all men by these presents:

That we, Hannah Canard Barnett and Tucker K. Barnett, as principals, and United States Fidelity and Guaranty Company, of Baltimore, Maryland, a Corporation, as surety, are held and firmly bound unto W. A. Kunkel and Prairie Oil and Gas Company, a Corporation, in the sum of Five Hundred (\$500.00) Dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Witness our hands and seals this 27th day of September, A. D. 922.

The condition of the foregoing obligation is such that, whereas, on the 29th day of July, A. D. 1922, in a suit pending in the Circuit Court of Appeals of the Eighth Circuit, at St. Louis, Missouri, wherein the above named Hannah Canard Barnett and Tucker K. Barnett, were appellants, and W. A. Kunkel and Prairie Oil and Gas Company, a Corporation, were appellees, a decree was made and rendered by the said Circuit Court of Appeals affirming a judgment of the United States District Court for the Eastern District of Oklahoma; and,

Whereas, The said Hannah Canard Barnett and Tucker K. Barnett have obtained an appeal to the Supreme Court of the United States to reverse said decree, and a citation directed to W. A. Kunkel and Prairie Oil and Gas Company, a Corporation, citing and admonishing them to be and appear at a session of the United States Supreme Court, to be holden in the City of Washington, in the District of Columbia, within thirty (30) days from the date of said citation.

Now therefore, The condition of the foregoing obligation is such that, if the said appellants shall prosecute their appeal to effect and answer all costs if they fail to make their plea good, then the above obligation shall be void, otherwise to remain in full force and effect.

HANNAH CANARD BARNETT,

By FRANCIS STEWART, *Her Attorney.*

TUCKER K. BARNETT,

By FRANCIS STEWART, *His Attorney.*

UNITED STATES FIDELITY AND
GUARANTY COMPANY,

By WALLACE B. BUTZ,

Attorney-in-fact.

And by B. BROADDUS,

Attorney-in-fact.

Approved this 30th day of September, A. D. 1922.

ROBT. E. LEWIS,
U. S. Circuit Judge, Eighth Circuit.

* * * * *

(A certified copy of the power of attorney of the United States Fidelity & Guaranty Company to Wallace B. Butz and B. Broaddus is attached to the original bond.)

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 2, 1922.

Citation.

United States of America to W. A. Kunkel and to Prairie Oil and Gas Company, a corporation, Greeting:

You are hereby notified that in a certain case in equity in the United States Circuit Court of Appeals in and for the Eighth Circuit of the United States, wherein Hannah Canard Barnett and Tucker K. Barnett are appellants, and W. A. Kunkel and Prairie Oil and Gas Company, a Corporation, are defendants, an appeal has been allowed the appellants therein to the Supreme Court of the United States. You are hereby cited and admonished to be and appear in said court at Washington, in the District of Columbia, thirty (30) days after the date of this citation, to show cause, if any there by, why the order and decree appealed from should not be corrected and speedy justice done to the parties in this behalf.

Witness the Honorable Robert E. Lewis, Circuit Judge of the Eighth Judicial Circuit of the United States Court at St. Louis, in the State of Missouri, in said Eighth Circuit, this 18th day of September, A. D. 1922.

ROBT. E. LEWIS,
U. S. Circuit Judge.

We hereby accept service of the foregoing citation this 7th day of October, A. D. 1922..

PRESTON C. WEST,
A. A. DAVIDSON,
*Solicitors for W. A. Kunkel and Prairie
Oil and Gas Company, the Above-named Appellees.*

[Endorsed:] U. S. Circuit Court of Appeals, Eighth Circuit. No. 5920. Hannah Canard Barnett, et al., Appellants, vs. W. A. Kunkel et al. Citation on Appeal to Supreme Court, U. S. with acceptance of service. Filed Oct. 10, 1922. E. E. Koch, Clerk.

(Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed and certified by the Clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the Act of Congress

approved February 13, 1911, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein Hannah Canard Barnett, et al., were Appellants, and W. A. Kunkel, et al., were Appellees, No. 5920, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acceptance of service endorsed thereon is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this tenth day of October, A. D. 1922.

[Seal of United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
*Clerk U. S. Circuit Court of Appeals
for the Eighth Circuit.*

Endorsed on cover: File No. 29,197. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 647. Hannah Canard Barnett and Tucker K. Barnett, appellants, vs. W. A. Kunkel and the Prairie Oil & Gas Company. Filed October 13th, 1922. File No. 29,197.

(7533)